

7A Am. Jur. 2d Automobiles III A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

A. Vehicles

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West's Key Number Digest

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7A Am. Jur. 2d Automobiles § 57

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III. Licensing, Taxation, and Registration

A. Vehicles

1. In General

§ 57. Registration requirements, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  21, 65

The purpose of vehicle registration requirements is identification and revenue.¹

Statutes in many states provide that it is illegal for any person to operate a motor vehicle on state's roads or highways unless the vehicle is registered.² These statutes also provide for certain penalties for failure to register, such as police impoundment of vehicles that are improperly registered.³ Violation of motor vehicle registration statutes may also have other consequences. For example, where a statute requires a vehicle seller to forward applications for registration of certificates of title to the county treasurer within a certain time after the vehicle is sold, failure to forward those documents constitutes negligence per se.⁴

In some jurisdictions, statutes have been enacted that make the payment of property taxes on motor vehicles a condition precedent to the licensing or registration of such vehicles.⁵

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Footnotes

¹ [In re Durette](#), 228 B.R. 70, 37 U.C.C. Rep. Serv. 2d 1142 (Bankr. D. Conn. 1998).

² [Satterlee v. State](#), 289 Ark. 450, 711 S.W.2d 827 (1986); [Redden v. State](#), 1987 OK CR 142, 739 P.2d 536 (Okla. Crim. App. 1987); [State v. Griffin](#), 183 Wis. 2d 327, 515 N.W.2d 535 (Ct. App. 1994).

³ [U.S. v. Rios](#), 88 F.3d 867 (10th Cir. 1996); [People v. Brown](#), 2016 COA 150, 2016 WL 6122812 (Colo. App. 2016).

⁴ [Tim O'Neill Chevrolet, Inc. v. Forristall, 551 N.W.2d 611 \(Iowa 1996\).](#)

⁵ [State v. Mirabal, 1928-NMSC-056, 33 N.M. 553, 273 P. 928, 62 A.L.R. 296 \(1928\).](#)

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7A Am. Jur. 2d Automobiles § 58

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III. Licensing, Taxation, and Registration

A. Vehicles

1. In General

§ 58. Registration certificates and license plates

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  39 to 41, 86

The statutes providing for the licensing of motor vehicles generally require the owners to procure a registration certificate and license plates, and to display the plates on the vehicle. Such a requirement does not violate the constitutional prohibitions against unreasonable searches, self-incrimination, or deprivation of property without due process of law,¹ and are constitutional exercises of the police power.² In fact, a stop of one's vehicle is justified by a police officer's observation of an expired license plate on the vehicle, which violates state law.³

In the design and issuance of license plates, a state may not require an individual to participate in the dissemination of an ideological message by requiring the display of a license plate containing such a message for the express purpose that it be observed and read by the public.⁴

Observation:

Vehicle dealers are regulated apart from ordinary vehicle owners, and under some such regulations, they are permitted to demonstrate their vehicles held for sale under dealers' license numbers.⁵

Footnotes

- ¹ [People v. Schneider](#), 139 Mich. 673, 103 N.W. 172 (1905).
- ² [City of Billings v. Skurdal](#), 224 Mont. 84, 730 P.2d 371 (1986); [State v. Garvin](#), 945 A.2d 821 (R.I. 2008).
- ³ [U.S. v. Aguilar](#), 301 F. Supp. 2d 1263 (D.N.M. 2004).
- ⁴ [Wooley v. Maynard](#), 430 U.S. 705, 97 S. Ct. 1428, 51 L. Ed. 2d 752 (1977) (a state could not enforce criminal sanctions for obscuring the state motto “Live Free or Die,” since the state’s requirement that noncommercial vehicle license plates be embossed with such a motto invaded First Amendment rights).
As to citizens’ rights to express themselves through vanity plates, see [§ 59](#).
- ⁵ [§ 166](#).

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III. Licensing, Taxation, and Registration

A. Vehicles

1. In General

§ 59. Registration certificates and license plates—Vanity and special plates

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  39 to 41, 86

A.L.R. Library

[Validity, Construction, and Operation of State Statutes Regulating Issuance of Special or Vanity License Plates](#), 8 A.L.R.6th 639

Generally, cases addressing a state's right to regulate customized license plates are decided based on whether a viewpoint is being expressed through the plate and, if so, whether a restriction on the plate is viewpoint neutral.¹ The question of a state's right to regulate customized license plates also turns on whether the plate is considered a public or nonpublic forum; restrictions on speech within nonpublic forum must not discriminate on basis of viewpoint, and must be reasonable in light of forum's purpose.²

Observation:

In some jurisdictions, constitutional challenges to license plates bearing the words "Choose Life" have been permitted,³ while in others, such challenges have failed due to lack of standing.⁴ In another jurisdiction, an action by motorists and an abortion-rights organization seeking to enjoin, on First Amendment grounds, the state's statutory scheme for specialty license plates containing the words "Choose Life" and "Adoption Creates Families" but no abortion-rights counterpart, was not mooted by a legislative amendment that expanded the scheme by permitting applications for other specialty plates for any cause, as the amendment's

requirement of 500 prepaid applications for the issuance of nonlisted plates was a discriminatory burden on abortion-rights supporters.⁵

Proper standing to bring a constitutional challenge regarding the issuance or revocation of a special license plate is attained when it is shown that the alleged injury is concrete, specific, and not hypothetical.⁶

Some courts have found that it is appropriate to revoke a license plate based on public complaints received, reasoning that such complaints are a good indication of what the public finds offensive,⁷ while other courts have held that the fact that a complaint has been received does not necessarily mean that the general public is offended.⁸

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Footnotes

¹ [Perry v. McDonald](#), 280 F.3d 159 (2d Cir. 2001) (viewpoint neutral); [Planned Parenthood Of South Carolina Inc. v. Rose](#), 361 F.3d 786 (4th Cir. 2004) (not viewpoint neutral); [Sons of Confederate Veterans, Inc. ex rel. Griffin v. Commissioner of Virginia Dept. of Motor Vehicles](#), 288 F.3d 610, 8 A.L.R.6th 797 (4th Cir. 2002) (not viewpoint neutral); [Choose Life Illinois, Inc. v. White](#), 547 F.3d 853 (7th Cir. 2008); [Byrne v. Terrill](#), 2005 WL 2043011 (D. Vt. 2005) (viewpoint neutral); [Kahn v. Department of Motor Vehicles](#), 16 Cal. App. 4th 159, 20 Cal. Rptr. 2d 6 (2d Dist. 1993) (viewpoint neutral).

² [Walker v. Texas Div., Sons of Confederate Veterans, Inc.](#), 135 S. Ct. 2239, 192 L. Ed. 2d 274 (2015) (Texas's specialty license plates were not nonpublic forum to which First Amendment speech protections applied; with respect to specialty license plate designs, Texas was not simply managing government property, but instead was engaging in expressive conduct, notwithstanding that it charged vehicle owners annual fees to display specialty plates); [Choose Life Illinois, Inc. v. White](#), 547 F.3d 853 (7th Cir. 2008).

³ [Planned Parenthood Of South Carolina Inc. v. Rose](#), 361 F.3d 786 (4th Cir. 2004) (enhanced standing is afforded to plaintiffs making facial First Amendment challenges to licensing or underinclusive statutes, and because the legislature selected one viewpoint over all others, the plaintiffs did not first have to apply for a license plate bearing a slogan of their own choice); [American Civil Liberties Union of Tennessee v. Bredesen](#), 354 F. Supp. 2d 770 (M.D. Tenn. 2004), judgment rev'd on other grounds, 441 F.3d 370, 2006 FED App. 0099P (6th Cir. 2006) (rejected on other grounds by, [Children First Foundation, Inc. v. Martinez](#), 631 F. Supp. 2d 159 (N.D. N.Y. 2007)).

⁴ [Choose Life Illinois, Inc. v. White](#), 547 F.3d 853 (7th Cir. 2008) (Illinois's exclusion from its specialty license plate program of entire subject of abortion was content-based, but viewpoint-neutral restriction on access to nonpublic forum of specialty license plates, and was reasonable given perception that specialty plates were approved by state; the state's denial of advocacy group's application for "Choose Life" plate did not infringe First Amendment's free speech guarantee); [Women's Emergency Network v. Bush](#), 323 F.3d 937 (11th Cir. 2003) (until the appellants applied for a specialty license plate and were rejected, there was no injury in fact and, therefore, no standing).

⁵ [Hill v. Kemp](#), 478 F.3d 1236 (10th Cir. 2007).

⁶ [Matwyuk v. Johnson](#), 22 F. Supp. 3d 812 (W.D. Mich. 2014) (vehicle owner's allegations that he was denied personalized license plate stating "WAR SUX" pursuant to Michigan's program that prohibited plates "that might carry a connotation offensive to good taste and decency" were sufficient to state claims that program was vague and overbroad in violation of his First Amendment speech rights, as required for his claims for declaratory and injunctive relief); [Barnard v. Motor Vehicle Div. of Utah State Tax Com'n](#), 905 P.2d 317 (Utah Ct. App. 1995) (citizen seeking the revocation of license plates containing combination of letters reading "redskin," "redskn" and "rdskin" did not have standing as the petitioner had no personal stake in the outcome of the matter).

⁷ [Perry v. McDonald](#), 280 F.3d 159 (2d Cir. 2001); [McMahon v. Iowa Dept. of Transp., Motor Vehicle Div.](#), 522 N.W.2d 51 (Iowa 1994); [Mitchell v. Maryland Motor Vehicle Administration](#), 450 Md. 282, 148 A.3d 319 (2016), as corrected on reconsideration, (Dec. 6, 2016).

⁸ [Sons of Confederate Veterans, Inc. v. Glendening, 954 F. Supp. 1099 \(D. Md. 1997\).](#)

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7A Am. Jur. 2d Automobiles § 60

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

a. Power of State, in General

§ 60. Power of state to license or tax, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  22 to 27, 66 to 72

Motor vehicle registration is a traditional government function.¹

Because the operation of a motor vehicle is a privilege,² the legislature of each state may, in the exercise of the police power, enact reasonable regulations requiring the licensing or registration of motor vehicles,³ including the private motor carriers of property,⁴ and public or common⁵ carriers of persons or property. Under some state constitutions, the imposition of licensing or registration fees under the police power will be upheld by the courts when plainly intended as police power regulation, so long as the revenue derived is not disproportionate to the cost of issuing the license and regulating the business to which it applies.⁶

The state may also impose such a fee or tax for revenue purposes,⁷ such as constructing and maintaining the public highways.⁸ A fee or tax imposed for revenue purposes is not limited to the cost of administering the law.⁹

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Footnotes

¹ [Prairie Band Potawatomi Nation v. Wagon](#), 476 F.3d 818 (10th Cir. 2007) (applying Kansas law).

² [Grimes v. Alfa Mutual Insurance Company](#), 2017 WL 382294 (Ala. 2017); [Burke v. Board of Appeal on Motor Vehicle Liability Policies and Bonds](#), 90 Mass. App. Ct. 203, 58 N.E.3d 351 (2016), review denied, 476 Mass. 1101, 63 N.E.3d 386 (2016).

- ³ Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); State v. Gish, 168 Iowa 70, 150 N.W. 37 (1914); State v. Folda, 267 Mont. 523, 885 P.2d 426 (1994); People v. McClean, 167 Misc. 40, 3 N.Y.S.2d 314 (N.Y. City Ct. 1938); State v. Booher, 978 S.W.2d 953 (Tenn. Crim. App. 1997).
- ⁴ Continental Baking Co. v. Woodring, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).
- ⁵ Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), *aff'd*, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930); State v. Lawrence, 108 Miss. 291, 66 So. 745 (1914); Camas Stage Co. v. Kozier, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922); Memphis St. Ry. Co. v. Rapid Transit Co., 133 Tenn. 99, 179 S.W. 635 (1915).
- ⁶ Merrelli v. City of St. Clair Shores, 355 Mich. 575, 96 N.W.2d 144 (1959).
- ⁷ Mark v. District of Columbia, 37 App. D.C. 563, 37 L.R.A.N.S. 440, 1911 WL 20154 (App. D.C. 1911); Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); City of Chicago v. Morell, 247 Ill. 383, 93 N.E. 295 (1910).
- ⁸ Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); State ex rel. Metropolitan Thoroughfare Authority of Marion County v. Nutting, 246 Ind. 105, 203 N.E.2d 192 (1964); Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), *aff'd*, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930); State v. Lawrence, 108 Miss. 291, 66 So. 745 (1914).
- ⁹ Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), *aff'd*, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916).
As to the nature of a licensing or registration fee or tax, generally, see §§ 71 to 80.

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

a. Power of State, in General

§ 61. Vehicles owned by nonresidents

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [28](#), [36](#), [67](#), [78](#)

It is well-settled that the police power of a state to regulate the use of motor vehicles on its highways extends to nonresidents as well as residents,¹ and that a state may prohibit the use of its highways by a foreign motor vehicle unless and until it is licensed in accordance with state laws.² While states may allow nonresidents to use vehicles in-state for limited periods of time without complying with their licensing or registration laws, as a pure matter of state power, a state can stop a nonresident motorist at its boundaries and require him or her, as a condition of operating the motor vehicle on the highways of the state, to pay a reasonable license fee.³ Such a requirement may, under proper circumstances, be extended to one engaged in interstate commerce.⁴

Under a state statute providing that a vehicle based in-state or primarily using in-state highways must be registered in-state, a vehicle owned by a resident but based out-of-state, and used primarily out-of-state, is not subject to the registration requirement.⁵

Observation:

A state's acceptance of an interstate registration reciprocity agreement with respect to motor vehicles constitutes a waiver of the right to impose registration fees in the form of retaliatory taxes on foreign-registered vehicles.⁶

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Footnotes

- ¹ § 19.
- ² C. I. T. Corp. v. W. J. Crosby & Co., 175 Va. 16, 7 S.E.2d 107 (1940).
- ³ Harper v. England, 124 Fla. 296, 168 So. 403 (1936); State ex rel. Cronkhite v. Belden, 193 Wis. 145, 214 N.W. 460, 57 A.L.R. 1218 (1927).
- ⁴ § 62.
- ⁵ Jones v. Pierce, 199 Cal. App. 3d 736, 245 Cal. Rptr. 149 (6th Dist. 1988).
- ⁶ Private Truck Council of America, Inc. v. State, 128 N.H. 466, 517 A.2d 1150 (1986).

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

b. Federal Limits on State Power

§ 62. Limits imposed by United States Constitution

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  23, 28, 67 to 69, 73

A.L.R. Library

[State taxation of motor carriers as affected by commerce clause](#), 17 A.L.R.2d 421

A statute imposing a tax on interstate motor carriers that is fairly apportioned, not discriminatory, and uses a reasonable exercise of legislative judgment, is constitutional under the Privileges and Immunities, Commerce, and Equal Protection Clauses of the United States Constitution.¹ However, a statute providing for a fee or tax on commercial vehicles is invalid under the Commerce Clause where it discriminates against out-of-state vehicles by subjecting them to a much higher charge per mile than in-state vehicles, where it does not purport to fairly approximate the cost or value of the use of the state's roads, where the amount owed does not vary directly with the number of miles traveled or with any other proxy for value obtained from the state, and where highway use taxes could be imposed by other states.²

Practice Tip:

When a motor carrier challenges a state's formula for apportioning franchise taxes under the Commerce Clause of the Federal Constitution, the burden of proof is not on the state to show that the formula is fair, but rather is upon the taxpayer to show that the

formula attributes a disproportionate income to the state or leads to a grossly distorted result.³

Under the Due Process Clause of the United States Constitution, proof of the habitual presence of a nonresident's vehicles in the state permits taxation by the state based on the average number of vehicles continuously present in the state.⁴

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- ¹ Morf v. Bingaman, 298 U.S. 407, 56 S. Ct. 756, 80 L. Ed. 1245 (1936); Bingaman v. Golden Eagle Western Lines, 297 U.S. 626, 56 S. Ct. 624, 80 L. Ed. 928 (1936); Hicklin v. Coney, 290 U.S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933); American Trucking Ass'n, Inc. v. Com., Transp. Cabinet, 676 S.W.2d 785 (Ky. 1984); State v. Garford Trucking, 4 N.J. 346, 72 A.2d 851, 16 A.L.R.2d 1407 (1950); People v. Learnard, 305 N.Y. 495, 114 N.E.2d 9 (1953); Shirks Motor Exp. Corp. v. Messner, 375 Pa. 450, 100 A.2d 913 (1953); Consolidated Freightways Corp. of Delaware v. Wisconsin Dept. of Revenue, 164 Wis. 2d 764, 477 N.W.2d 44 (1991).
- ² American Trucking Associations, Inc. v. Scheiner, 483 U.S. 266, 107 S. Ct. 2829, 97 L. Ed. 2d 226 (1987); American Trucking Associations, Inc. v. Secretary of Admin., 415 Mass. 337, 613 N.E.2d 95 (1993).
An individual may properly bring a claim under 42 U.S.C.A. § 1983 that the Commerce Clause is violated by certain allegedly retaliatory taxes and fees imposed by a state on motor carriers. Dennis v. Higgins, 498 U.S. 439, 111 S. Ct. 865, 112 L. Ed. 2d 969 (1991).
- ³ Consolidated Freightways Corp. of Delaware v. Wisconsin Dept. of Revenue, 164 Wis. 2d 764, 477 N.W.2d 44 (1991).
- ⁴ State v. Richard L. Hodges, Inc., 420 A.2d 247 (Me. 1980).

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III. Licensing, Taxation, and Registration

A. Vehicles


2. Power to License or Tax

b. Federal Limits on State Power

§ 63. Limits imposed by United States Constitution—Imposition of different fees or taxes on vehicles purchased out-of-state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  28, 73

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[Sales or use tax on motor vehicle purchased out of state, 45 A.L.R.3d 1270](#)

A fee imposed on vehicles purchased out-of-state and then titled in-state, which may result in purchasers paying more tax on vehicles purchased out-of-state, is invalid as a violation of the Commerce Clause where it does not advance a legitimate local purpose that could not be adequately served by reasonable nondiscriminatory means.¹ Likewise, a vehicle registration fee which imposes a higher per mile flat tax rate for out-of-state carriers than for in-state carriers had a discriminatory effect on interstate commerce in violation of the Commerce Clause.² A state's use of a different method for determining the market value of vehicles purchased out-of-state to determine license fees and use taxes discriminates between interstate and local commerce, and therefore also violates the Commerce Clause.³ A state motor vehicle use tax statute violates the Equal Protection Clause of the 14th Amendment to the Federal Constitution when it grants a credit for sales tax paid to a reciprocating state on cars purchased by present residents of the state, even though the cars had been previously registered and used in the reciprocating state, but denies credit for sales tax paid by those who purchased and registered their cars outside of the state before becoming residents of the state.⁴

Even assuming such statutes are valid, a tax on vehicles purchased out-of-state may not be applied to a vehicle that is used only occasionally in-state, as the connection with the state is too tenuous.⁵

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Footnotes

- ¹ [Department of Revenue v. Kuhnlein](#), 646 So. 2d 717 (Fla. 1994), as clarified, (Nov. 30, 1994).
- ² [Owner Operator Independent Drivers Ass'n v. New York State Dept. of Taxation and Finance](#), 52 Misc. 3d 855, 34 N.Y.S.3d 332 (Sup 2016).
- ³ [Woosley v. State of California](#), 3 Cal. 4th 758, 13 Cal. Rptr. 2d 30, 838 P.2d 758 (1992), as modified on other grounds on denial of reh'g, (Dec. 31, 1992).
- ⁴ [Williams v. Vermont](#), 472 U.S. 14, 105 S. Ct. 2465, 86 L. Ed. 2d 11 (1985).
- ⁵ [McMahon v. Limbach](#), 65 Ohio St. 3d 310, 603 N.E.2d 996 (1992).

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7A Am. Jur. 2d Automobiles § 64

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

b. Federal Limits on State Power

§ 64. Sovereignty of and treaties with Indian tribes

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  23, 28, 68, 72, 74

A state's vehicle taxation laws may be preempted by the sovereignty of Indian tribes.¹ This preemption may occur even if the tribal members in question do not live on a formal reservation.² A state that recognizes the vehicle registrations of all other states, foreign countries, and out-of-state Indian tribes cannot refuse to grant recognition to motor vehicle registrations issued by a Native American tribe within the state, based on alleged safety concerns, as that amounts to impermissible discrimination.³ A state's motor vehicle and mobile home, camper, and trailer taxes, which impose an excise tax for the privilege of using a covered vehicle in the state, cannot be imposed on vehicles owned by tribes or their members and used both on and off reservations.⁴

Observation:

Whether a treaty exempts a tribe from state highway user fees depends on the intent of the parties when they signed the treaty.⁵

Footnotes

- ¹ [Oklahoma Tax Com'n v. Sac and Fox Nation](#), 508 U.S. 114, 113 S. Ct. 1985, 124 L. Ed. 2d 30 (1993).
- ² [Oklahoma Tax Com'n v. Sac and Fox Nation](#), 508 U.S. 114, 113 S. Ct. 1985, 124 L. Ed. 2d 30 (1993) (it is enough that the member live in "Indian country," which is statutorily defined to include formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States (citing 18 U.S.C.A. § 1151)).
- ³ [Prairie Band Potawatomi Nation v. Wagon](#), 476 F.3d 818 (10th Cir. 2007) (applying Kansas law).
- ⁴ [Washington v. Confederated Tribes of Colville Indian Reservation](#), 447 U.S. 134, 100 S. Ct. 2069, 65 L. Ed. 2d 10, 29 Fed. R. Serv. 2d 743 (1980).
- ⁵ [Cree v. Waterbury](#), 78 F.3d 1400 (9th Cir. 1996).

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

b. Federal Limits on State Power

§ 65. Preemption by federal legislation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  23 to 27, 67 to 72

A state statute imposing an annual registration fee on trucks registered in the state which operate entirely in interstate commerce is not preempted by a federal statute requiring that interstate motor carriers obtain a federal permit, and providing that the imposition of any additional state registration requirement is a burden on interstate commerce, where the state statute makes no reference to the federal permit, no state rules related to the state fee require the filing of information about a federal permit, state law imposed a separate fee on interstate trucks with state plates before the federal permit statute existed, state law provides that an interstate truck with state plates can comply with federal requirements without complying with the state fee requirement, and although the state gives a discount in the amount of the federal fee for trucks that pay the state fee, such a connection does not transform the fee into a requirement concerning the federal statute.¹

Federal legislation addresses commercial motor vehicle safety,² commercial motor vehicle operators,³ and motor carrier safety.⁴ In passing federal motor carrier laws, Congress did not intend to occupy completely the field of safety regulations for the operation on interstate highways of commercial vehicles, and indeed contemplated the continued application and enforcement of state rules or regulations which might not be inconsistent or incompatible with federal regulations.⁵ In effect, Congress intended an accommodation with state regulation so long as that could be achieved without violating federal law or valid federal regulation.⁶

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Footnotes

¹ [Mid-Con Freight Systems, Inc. v. Michigan Public Service Com'n](#), 545 U.S. 440, 125 S. Ct. 2427, 162 L. Ed. 2d 418

(2005) (applying federal and Michigan law).

² 49 U.S.C.A. §§ 31101 to 31151.

³ 49 U.S.C.A. §§ 31301 to 31317.

⁴ 49 U.S.C.A. §§ 31501 to 31504.

⁵ *Specialized Carriers & Rigging Assoc. v. Com. of Va.*, 795 F.2d 1152 (4th Cir. 1986); *Dixon v. Hot Shot Exp., Inc.*, 44 So. 3d 1082 (Ala. 2010).

Federal motor carrier safety regulations are not intended to preclude states from establishing or enforcing state laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto. *Brown v. Holiday Stationstores, Inc.*, 723 F. Supp. 396 (D. Minn. 1989).

⁶ *Specialized Carriers & Rigging Assoc. v. Com. of Va.*, 795 F.2d 1152 (4th Cir. 1986).

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

c. Power of Municipalities or Political Subdivisions of the State

§ 66. Power of municipalities or political subdivisions of the state to license or tax vehicles, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  23 to 27, 67 to 72

Where a state statute providing for the licensing or taxation of motor vehicles provides that it is exclusive, a municipal corporation cannot legislate on this subject, and ordinances which fall within the exclusive domain of the state are null and void.¹ On the other hand, in a state with home-rule provisions, a county may properly impose a road maintenance fee on all motor vehicles registered in the county, pursuant to the county's home-rule authority, provided only that the fee is a fair and reasonable alternative to increasing the general county property tax and is imposed upon those for whom the service is primarily provided.²

A statute providing for exclusive licensing by the state does not prevent a municipality from requiring a license in the course of a bona fide regulation of an occupation, even though the nature of the occupation implies the use of the streets by a motor vehicle.³ Unless the state licensing statute provides that it is exclusive, the mere fact that the state licenses motor vehicles does not, in and of itself, exclude the power of a municipality to require an additional license under the police power.⁴ In addition, so-called exclusive licensing statutes frequently reserve to local authorities the power to license vehicles for hire.⁵

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¹ [Phenix City v. Putnam](#), 268 Ala. 661, 109 So. 2d 836 (1959); [Anderson v. Wentworth](#), 75 Fla. 300, 78 So. 265 (1918).

² [Brown v. County of Horry](#), 308 S.C. 180, 417 S.E.2d 565 (1992).

³ City of Buffalo v. Lewis, 192 N.Y. 193, 84 N.E. 809 (1908).

⁴ Borough of Applewold v. Dosch, 239 Pa. 479, 86 A. 1070 (1913).

⁵ Phenix City v. Putnam, 268 Ala. 661, 109 So. 2d 836 (1959); Anderson v. Wentworth, 75 Fla. 300, 78 So. 265 (1918).

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III. Licensing, Taxation, and Registration

A. Vehicles


2. Power to License or Tax

c. Power of Municipalities or Political Subdivisions of the State

§ 67. Delegation of power by state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  27, 72, 73

In the absence of constitutional limitations, the legislature of each state may delegate to its municipalities or other political subdivisions the power to impose a fee or tax for the licensing or registration of motor vehicles generally,¹ and of motor vehicles for hire engaged in intrastate² or interstate commerce.³ The fee or tax may be used for revenue purposes generally,⁴ or for the improvement or maintenance of streets or roads.⁵

Where a municipality has been delegated the power to regulate the use of its streets by vehicles, it may require a license for such use and impose a reasonable license fee.⁶ However, a municipality, under a delegated power to provide for the imposition of license fees or taxes upon the owners of motor vehicles, does not have the power to enact an ordinance imposing a fee or tax in excess of the amount that the state statute authorizes.⁷

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¹ [Duval Lumber Co. v. Slade](#), 147 Fla. 137, 2 So. 2d 371 (1941); [Larson v. Seattle Popular Monorail Authority](#), 156 Wash. 2d 752, 131 P.3d 892 (2006), as amended on other grounds, (May 24, 2006).
An island village which was granted legislative authority to regulate motor vehicles and which had been given the authority to impose fees on certain vehicles according to their weight, did not exceed its authority by imposing fees based on weight and width. [Bald Head Island, Ltd. v. Village of Bald Head Island](#), 175 N.C. App. 543, 624 S.E.2d 406 (2006).

- ² S.B. Carts, Inc. v. Put-in-Bay, 161 Ohio App. 3d 691, 2005-Ohio-3065, 831 N.E.2d 1052 (6th Dist. Ottawa County 2005); Portland Van & Storage Co. v. Hoss, 139 Or. 434, 9 P.2d 122, 81 A.L.R. 1136 (1932); Hadfield v. Lundin, 98 Wash. 657, 168 P. 516 (1917).
- ³ Buck v. People of State of Cal., 343 U.S. 99, 72 S. Ct. 502, 96 L. Ed. 775 (1952); Sprout v. City of South Bend, Ind., 277 U.S. 163, 48 S. Ct. 502, 72 L. Ed. 833, 62 A.L.R. 45 (1928); American Bus Ass'n, Inc. v. District of Columbia, 2 A.3d 203 (D.C. 2010).
As to the power of the state itself to tax vehicles engaged in interstate commerce, see § 62.
- ⁴ Harder's Fireproof Storage & Van Co. v. City of Chicago, 235 Ill. 58, 85 N.E. 245 (1908); Ex parte Dickey, 76 W. Va. 576, 85 S.E. 781 (1915).
- ⁵ American Bus Ass'n, Inc. v. District of Columbia, 2 A.3d 203 (D.C. 2010); City of Chicago v. Morell, 247 Ill. 383, 93 N.E. 295 (1910); City of Des Moines v. Bolton, 128 Iowa 108, 102 N.W. 1045 (1905).
- ⁶ People's Taxicab Co. v. City of Wichita, 140 Kan. 129, 34 P.2d 545, 95 A.L.R. 1218 (1934); Fiscal Court of Owen County v. F. & A. Cox Co., 132 Ky. 738, 117 S.W. 296 (1909).
- ⁷ City of Sikeston v. Marsh, 110 S.W.2d 1135 (Mo. Ct. App. 1937).

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

c. Power of Municipalities or Political Subdivisions of the State

§ 68. Conflict between state statutes and local regulations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  29, 30, 74, 75

Where state motor vehicle licensing or taxation statutes provide that they are exclusive, local ordinances requiring vehicle registration or taxation are invalid.¹ In addition, even when a municipality or subdivision of the state has been delegated the power to impose license or registration fees or taxes upon the owners of motor vehicles, it has no power to enact an ordinance in such respect that conflicts with valid state statutes.² However, not all ordinances providing for the licensing or taxing of motor vehicles conflict with state statutes regulating the licensing of motor vehicles.³

Some ordinances relating to the licensing of motor vehicles for hire have been upheld, notwithstanding the provisions of statutes regulating such vehicles.⁴ However, where the state statute limits or prohibits the imposition of taxes by local authorities upon operators of motor vehicles for hire, a tax or license fee imposed by an ordinance is invalid.⁵

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Footnotes

¹ § 66.

² [City of Sikeston v. Marsh](#), 110 S.W.2d 1135 (Mo. Ct. App. 1937); [C. D. Kenny Co. v. Town of Brevard](#), 217 N.C. 269, 7 S.E.2d 542 (1940); [Western Auto Transports v. City of Cheyenne](#), 57 Wyo. 351, 120 P.2d 590 (1942).

³ [State ex rel. Nelson v. Quigg](#), 143 Fla. 227, 196 So. 417 (1940); [Sperling v. Valentine](#), 176 Misc. 826, 28 N.Y.S.2d 788 (Sup 1941); [Continental Baking Co. v. City of Mt. Vernon](#), 182 Wash. 68, 44 P.2d 821 (1935).

⁴ Cooper v. Town of Greenwood, 195 Ark. 26, 111 S.W.2d 452 (1937); City of Chicago v. Hastings Express Co., 369 Ill. 610, 17 N.E.2d 576 (1938); State v. Palmer, 212 Minn. 388, 3 N.W.2d 666 (1942); Covey Drive Yourself & Garage v. City of Portland, 157 Or. 117, 70 P.2d 566 (1937).

⁵ Talley v. City of Blytheville, 204 Ark. 745, 164 S.W.2d 900 (1942); Heartt v. Village of Downers Grove, 278 Ill. 92, 115 N.E. 869 (1917).

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

c. Power of Municipalities or Political Subdivisions of the State

§ 69. Regulation of nonresident vehicle owners

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  32, 36, 78

A nonresident of a municipality who merely passes through it occasionally with a motor vehicle and uses the streets in isolated instances cannot be made to pay a license fee or tax for operating the vehicle on the municipal streets.¹ Statutes that empower municipalities to license and regulate motor vehicles for hire within their limits are not ordinarily construed to authorize the passage of ordinances attempting to impose a license or tax on vehicles that undertake to transport for hire between points within a municipality and points without, or that merely pass through the streets of a municipality in going to and from points without its limits.²

The power of a municipality to impose license fees or taxes upon motor vehicles owned by nonresidents is particularly precluded by statutes which provide that, where an owner of a motor vehicle has properly registered the vehicle with the state, the owner may not be required by any municipality other than that within which he or she resides to pay any tax or license fee for the use of the vehicle.³

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¹ City of Georgetown v. Morrison, 362 S.W.2d 289 (Ky. 1962); Western Auto Transports v. City of Cheyenne, 57 Wyo. 351, 120 P.2d 590 (1942).

² City of Argenta v. Keath, 130 Ark. 334, 197 S.W. 686 (1917); Metropolitan Convoy Corp. v. City of New York, 2 N.Y.2d 384, 161 N.Y.S.2d 31, 141 N.E.2d 550 (1957).

³ [City of Flora v. Borders](#), 342 Ill. 208, 173 N.E. 784 (1930).

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III. Licensing, Taxation, and Registration

A. Vehicles


2. Power to License or Tax

c. Power of Municipalities or Political Subdivisions of the State

§ 70. Double taxation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  97, 102

Constitutional provisions prohibiting double taxation are not violated by statutes imposing a license or registration fee or tax upon motor vehicles that are already subject to an ad valorem tax.¹ Without violating constitutional provisions against double taxation, a municipality may, when authorized by statute, impose a license tax for the use of its streets by vehicles, for the purpose of revenue, although such vehicles are already taxed as property at their full value.²

In levying license fees upon automobiles for highway purposes, the state may exempt them from other taxation as against a municipality which might otherwise have levied a personal property tax on them, notwithstanding the whole revenue realized by the license tax is not to be expended on highways in the municipality.³

While there is some contrary authority,⁴ a tax upon the operation of a vehicle on the public highways is not considered double taxation when imposed upon one who has already paid an occupation tax or privilege tax upon a business involving the use of the same vehicle, because the use of the highways is a privilege separate from that of the conduct of the business,⁵ or because the imposition of a fee upon the operation of the vehicle is an exercise of the police power.⁶

A license fee imposed by a state is not rendered invalid by the fact that the owner of the vehicle is already required to pay a city license tax.⁷

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¹ Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914).

² Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).

³ State v. Wetz, 40 N.D. 299, 168 N.W. 835, 5 A.L.R. 731 (1918).

⁴ City of Newport v. Fitzer, 131 Ky. 544, 115 S.W. 742 (1909).

Where an owner-operator has paid the tax imposed on his tractor, a trucking company may use the tractor without having to pay any further tax. B&T Express, Inc. v. Pub. Util. Comm., 145 Ohio App. 3d 656, 763 N.E.2d 1241 (10th Dist. Franklin County 2001).

⁵ City of Enterprise v. Fleming, 240 Ala. 460, 199 So. 691 (1940); Derst Baking Co. v. Mayor and Aldermen of City of Savannah, 180 Ga. 510, 179 S.E. 763 (1935).

⁶ Hertz Drivurself Stations v. City of Louisville, 294 Ky. 568, 172 S.W.2d 207, 147 A.L.R. 306 (1943).

⁷ Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).

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III. Licensing, Taxation, and Registration

A. Vehicles

3. Nature and Amount of Tax

a. In General

§ 71. Nature of license fee or tax; distinction from property tax

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  21, 45 to 51, 65, 97 to 103

Although motor vehicles may be taxed as property, the charge made in connection with the licensing and registration of motor vehicles generally is deemed to be a license fee or tax for the privilege of using the public highways, rather than a property tax, even where it is based on the vehicle's value,¹ or where the fees go into a general fund, but are earmarked for use to maintain and improve local roads.² Because they are not property taxes, such charges are not affected by constitutional provisions governing ad valorem taxes.³ The charge is designated as an excise,⁴ a license,⁵ or a privilege⁶ tax or fee, or as a service charge.⁷ Such a tax or fee has sometimes been said to be in the nature of a toll for using the highways.⁸ In some instances, the provisions of particular statutes imposing a charge in connection with the licensing or registration of motor vehicles have been held to impose a property tax,⁹ or a combination privilege¹⁰ or license¹¹ and property tax.

While the intent of the legislature as to whether a fee exacted in connection with the licensing or registration of a motor vehicle constitutes an exercise of the state's police power or the state's taxation power is not absolutely controlling,¹² it is an important factor in determining the nature of the fee.¹³ Where the legislation creating a charge assessed for the privilege of operating overweight or overdimensional vehicles on state highways designates the charge as a license fee, it has been considered to be a license fee, which cannot be excessive in relation to the cost of administering the permit program, rather than a tax.¹⁴

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¹ [Storaasli v. State of Minn.](#), 283 U.S. 57, 51 S. Ct. 354, 75 L. Ed. 839 (1931); [Ingels v. Riley](#), 5 Cal. 2d 154, 53 P.2d

939, 103 A.L.R. 1 (1936); *Ex parte Kessler*, 26 Idaho 764, 146 P. 113 (1915); *Camas Stage Co. v. Kozer*, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

A fee applied to trailers used in transporting goods to and from Puerto Rico is not a tax, where the fees paid are held separately from general state funds, are dedicated exclusively to reimbursing private parties and covering administrative expenses, are collected only from those seeking the privilege of driving on state highways, and are proportioned to compensate victims for specified damages resulting from that activity. *Trailer Marine Transport Corp. v. Rivera Vazquez*, 977 F.2d 1 (1st Cir. 1992).

As to the power to license or tax motor vehicles, generally, see §§ 60 to 70.

As to methods of determining the amount of the tax, generally, see §§ 74 to 80.

2 *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992).

3 *Ex parte Kessler*, 26 Idaho 764, 146 P. 113 (1915); *Kane v. Titus*, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), *aff'd*, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916); *State v. Mirabal*, 1928-NMSC-056, 33 N.M. 553, 273 P. 928, 62 A.L.R. 296 (1928); *Camas Stage Co. v. Kozer*, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).
As to the taxation of property on the basis of its value, generally, see *Am. Jur. 2d, State and Local Taxation* §§ 642 to 647.

4 *Storaasli v. State of Minn.*, 283 U.S. 57, 51 S. Ct. 354, 75 L. Ed. 839 (1931).

5 *Ex parte Kessler*, 26 Idaho 764, 146 P. 113 (1915); *Commonwealth v. Boyd*, 188 Mass. 79, 74 N.E. 255 (1905).

6 *Ingels v. Riley*, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936); *Ex parte Kessler*, 26 Idaho 764, 146 P. 113 (1915); *Kane v. Titus*, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), *aff'd*, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916); *Camas Stage Co. v. Kozer*, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

7 *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992).

8 *Hendrick v. State of Maryland*, 235 U.S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1915); *State v. Lawrence*, 108 Miss. 291, 66 So. 745 (1914); *Kane v. Titus*, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), *aff'd*, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916).

9 *Powell v. Gleason*, 50 Ariz. 542, 74 P.2d 47, 114 A.L.R. 838 (1937); *Walker v. Bedford*, 93 Colo. 400, 26 P.2d 1051 (1933).

10 *Raymond v. Holm*, 165 Minn. 215, 206 N.W. 166 (1925).

11 *State v. Wetz*, 40 N.D. 299, 168 N.W. 835, 5 A.L.R. 731 (1918).

12 *Vernor v. Secretary of State*, 179 Mich. 157, 146 N.W. 338 (1914); *Camas Stage Co. v. Kozer*, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

13 *Vernor v. Secretary of State*, 179 Mich. 157, 146 N.W. 338 (1914); *Camas Stage Co. v. Kozer*, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

14 *Com. v. Thomas Heavy Hauling, Inc.*, 889 S.W.2d 807 (Ky. 1994).

As to the limitation of license fees to the cost of administering the program, generally, see § 72.

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III. Licensing, Taxation, and Registration

A. Vehicles


3. Nature and Amount of Tax

a. In General

§ 72. Amount of fee or tax; police power measures

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  46, 98

To the extent that a motor vehicle license or registration fee is levied under the police power, its amount is limited to that necessary for the administration of the law;¹ or, as it is sometimes said, the amount must not be disproportionate to the cost of issuing the license and the regulation of the subject matter to which it applies.² The amount of a fee imposed under the police power rests to a certain extent in the sound discretion of the legislature, which takes into consideration all the circumstances and necessities of the case, and it will be presumed that the amount of the fee is reasonable unless the contrary appears upon the face of the law itself or is established by proper evidence.³

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- ¹ Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), *aff'd*, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930).
- ² Vernor v. Secretary of State, 179 Mich. 157, 146 N.W. 338 (1914); Minneapolis Street Ry. Co. v. City of Minneapolis, 229 Minn. 502, 40 N.W.2d 353 (1949).
- ³ Vernor v. Secretary of State, 179 Mich. 157, 146 N.W. 338 (1914); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

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Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

A. Vehicles


3. Nature and Amount of Tax

a. In General

§ 73. Amount of fee or tax; police power measures—Revenue measures

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  46, 98

The amount of a motor vehicle license or registration fee or tax that may be levied for revenue purposes is largely within the control of the legislature, the legislature having plenary authority, subject to constitutional limitations, to determine the amount of the fee.¹ Such a fee or tax is not limited, as is the imposition of a fee under the police power, to the cost of administration.² Where, however, such a fee or tax is imposed by a municipality acting under taxing powers conferred upon it by the legislature, it must be reasonable in amount.³

A licensing fee that is imposed as a tax may be graduated according to the legislative determination⁴ of what is required to be collected as compensation for the use of the highways and the deterioration of the highways that results from such use.⁵ Absolute or perfect equality and uniformity in taxation are impossible, and substantial compliance with the requirements of equality and uniformity in taxation laid down by the Federal and State Constitutions is all that is required.⁶ Likewise, not all discrimination or classification is forbidden in motor vehicle licensing or registration taxation,⁷ and statutes imposing graduated motor vehicle registration or license fees or taxes in the nature of revenue measures have been sustained as valid in many cases where they were attacked on the grounds of discrimination or improper classification.⁸

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Footnotes

¹ [Kane v. Titus](#), 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), [aff'd](#), 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916).

- ² Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915).
- ³ Waters-Pierce Oil Co. v. City of Hot Springs, 85 Ark. 509, 109 S.W. 293 (1908); Ex parte Cardinal, 170 Cal. 519, 150 P. 348 (1915).
- ⁴ Carter v. State Tax Commission, 98 Utah 96, 96 P.2d 727, 126 A.L.R. 1402 (1939).
- ⁵ Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Carter v. State Tax Commission, 98 Utah 96, 96 P.2d 727, 126 A.L.R. 1402 (1939).
As to particular methods of determining the amount of the fee, see §§ 74 to 80.
- ⁶ Am. Jur. 2d, State and Local Taxation § 101.
- ⁷ State v. Black Hills Transp. Co., 71 S.D. 28, 20 N.W.2d 683 (1945).
- ⁸ Hendrick v. State of Maryland, 235 U.S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1915); Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), *aff'd*, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916).

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III. Licensing, Taxation, and Registration

A. Vehicles


3. Nature and Amount of Tax

b. Particular Methods of Determining Amount

§ 74. Flat fee on particular owners

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  46, 98

A flat fee for road maintenance that is imposed on all motor vehicles registered in a particular county is valid; it does violate equal protection, as the classification reasonably presumes that such owners are the persons who would most often use county roads.¹ However, an ordinance imposing a flat per-plate fee on automobile dealer and wholesaler license tags for the purpose of county road improvements is not a valid uniform service charge, despite the county's claim that better roads would mean fewer "dings" from debris and fewer paint repairs, and hence a greater profit to automobile dealers, because the asserted benefit inures to all automobiles, and not just to those driven with dealer or wholesaler tags.²

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Footnotes

¹ [Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 \(1992\).](#)

² [Fairway Ford, Inc. v. County of Greenville, 324 S.C. 84, 476 S.E.2d 490 \(1996\).](#)

7A Am. Jur. 2d Automobiles § 75

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III. Licensing, Taxation, and Registration

A. Vehicles

3. Nature and Amount of Tax

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§ 75. Weight of vehicle

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  28, 46, 98

A motor vehicle license or registration fee or tax which is in the nature of a revenue measure may properly be graduated according to the weight of the vehicle without rendering the fee or tax unconstitutional.¹ A statute providing for such a fee or tax is not based on unreasonable classifications, as the ground of difference between the classes has a fair and substantial relation to the object of the legislation, that is, to regulation based upon the wear and tear to which the roads are subjected by the licensees.²

A statute providing for a fee or tax based on vehicle weight is not invalid under the Commerce Clause if laid on motor carriers in interstate commerce, so long as there is no discrimination against them in contrast with those engaged in intrastate commerce.³ In graduating the amount of license or registration fees or taxes in accordance with the weight of vehicles, the state may exempt vehicles weighing less than a certain number of pounds, even though their loaded weight may be much more than that of vehicles not exempt. Such an exemption does not infringe the Equal Protection Clause of the 14th Amendment to the Federal Constitution or a similar provision of a state constitution.⁴

Where the purpose of penalties imposed under a statutory excess weight provision is to deter damage to state highways, the owners of commercial vehicles who operate those vehicles at weights in excess of the gross weights provided on their registration certificates are properly subject to penalties.⁵ Under a statute basing the licensing or registration fee upon the weight of the vehicle, issuance of a license to transport declared weights does not bar the state from prosecuting for violations of the truck weight statute.⁶

A state agency may require that trucking companies keep records by vehicle configuration and vehicle weight for the purposes of a use tax assessment, and if a trucking company fails to keep such records in a form acceptable to the department,

the agency may assess the company at the highest registered maximum gross weight reported.⁷

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- ¹ Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).
- ² Carter v. State Tax Commission, 98 Utah 96, 96 P.2d 727, 126 A.L.R. 1402 (1939).
- ³ Bode v. Barrett, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953); Dixie Ohio Exp. Co. v. State Revenue Commission of Georgia, 306 U.S. 72, 59 S. Ct. 435, 83 L. Ed. 495 (1939).
- ⁴ Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).
- ⁵ State v. Churchdale Leasing, Inc., 115 N.J. 83, 557 A.2d 277 (1989).
- ⁶ Department of Public Safety v. Freeman Ready-Mix Co., 292 Ala. 380, 295 So. 2d 242 (1974).
As to weight limitations, generally, see §§ 210 to 215.
- ⁷ D & D Trucking, Inc. v. Idaho Transp. Dept., 126 Idaho 417, 885 P.2d 376 (1994).

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III. Licensing, Taxation, and Registration

A. Vehicles

3. Nature and Amount of Tax

b. Particular Methods of Determining Amount

§ 76. Load, carrying, or seating capacity of vehicle

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  46, 98

The amount of the fee or tax to be exacted in connection with the licensing or registration of a motor vehicle may properly be graduated according to the seating¹ or load or carrying² capacity of the vehicle, at least insofar as the statute providing for the fee or tax is a revenue measure enacted under the taxing power. Such a classification of vehicles is reasonable, proper, and valid, as it is based on a uniform, fair, and practicable standard.³ In addition, a motor vehicle license or registration fee or tax based upon seating⁴ or load or carrying⁵ capacity is not invalid when laid on motor carriers in interstate commerce, if there is no discrimination against them in contrast with those engaged in intrastate commerce.

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Footnotes

¹ Ayres v. City of Chicago, 239 Ill. 237, 87 N.E. 1073 (1909); Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), aff'd, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

² Richmond Baking Co. v. Department of Treasury, 215 Ind. 110, 18 N.E.2d 778 (1939).

³ Pine Bluff Transfer Co. v. Nichol, 140 Ark. 320, 215 S.W. 579 (1919).

⁴ Northern Kentucky Transp. Co. v. City of Bellevue, 215 Ky. 514, 285 S.W. 241 (1926).

⁵ City of Chicago v. Willett Co., 344 U.S. 574, 73 S. Ct. 460, 97 L. Ed. 559 (1953); Hicklin v. Coney, 290 U.S. 169, 54

§ 76. Load, carrying, or seating capacity of vehicle, 7A Am. Jur. 2d Automobiles § 76

S. Ct. 142, 78 L. Ed. 247 (1933); *Bode v. Barrett*, 412 Ill. 204, 106 N.E.2d 521 (1952), judgment aff'd, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953).

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III. Licensing, Taxation, and Registration

A. Vehicles


3. Nature and Amount of Tax

b. Particular Methods of Determining Amount

§ 77. Value or age of vehicle

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  46, 98

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[State taxation of motor carriers as affected by commerce clause, 17 A.L.R.2d 421](#)

Statutes providing for fees or taxes to be levied in connection with the licensing or registration of motor vehicles in accordance with the value thereof have been held valid and not unconstitutionally discriminatory.¹ However, an ad valorem tax on an entire vehicle fleet cannot be sustained in the absence of a showing that the fleet travels through the taxing jurisdiction at a fixed time and on regular routes, or that the fleet is habitually employed in that community throughout the tax year, or that it is otherwise protected or benefited by the taxing jurisdiction.²

Statutes setting forth a schedule of motor vehicle license or registration fees or taxes based upon the age of the vehicle have been held valid as against the contention that they are arbitrary and unreasonable.³

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Footnotes

- ¹ [Raymond v. Holm](#), 165 Minn. 215, 206 N.W. 166 (1925).
An excise tax on motor vehicles is calculated on the basis of the manufacturer's list price, rather than the price at which the vehicle was sold. [Lily Transp. Corp. v. Board of Assessors of Medford](#), 427 Mass. 228, 692 N.E.2d 53 (1998).
- ² [Hemingway Transport, Inc. v. Tax Assessor of City of East Providence](#), 105 R.I. 411, 252 A.2d 340 (1969).
- ³ [Dohns v. Holm](#), 152 Minn. 529, 189 N.W. 418 (1922).

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III. Licensing, Taxation, and Registration

A. Vehicles


3. Nature and Amount of Tax

b. Particular Methods of Determining Amount

§ 78. Character of vehicle or its use of highways; mileage

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  46, 98

Fees or taxes levied in connection with the registration or licensing of motor vehicles may properly be graduated in accordance with the class and character of the vehicles and their use of the public highways.¹ Registration fees for fleet vehicles are sometimes based on the mileage traveled by the entire fleet, rather than by each vehicle.² Statutes in some jurisdictions prohibit the netting of overpaid and unpaid commercial vehicle registration fees when liability for such fees is estimated.³

Observation:

Where vehicles that were registered under an automobile dealer's "U-drive-it" permit were not used for leasing or rental purposes, but rather, as customer courtesy cars or for various other business purposes, those vehicles were not eligible for alternative tax treatment that allowed the holder of a "U-drive-it" permit to pay a usage tax of 5% of the gross rental or lease charges instead of the regular motor vehicle usage tax.⁴

Footnotes

- ¹ Waters-Pierce Oil Co. v. City of Hot Springs, 85 Ark. 509, 109 S.W. 293 (1908); Ex parte Cardinal, 170 Cal. 519, 150 P. 348 (1915).
- ² American Trucking Ass'n, Inc. v. Gray, 288 Ark. 488, 707 S.W.2d 759 (1986), judgment vacated on other grounds, 483 U.S. 1014, 107 S. Ct. 3252, 97 L. Ed. 2d 752 (1987); In re Protest of Freymiller, Inc., 2005 OK CIV APP 94, 127 P.3d 615 (Div. 3 2005).
- ³ In re Adway Properties, Inc., 2006 OK CIV APP 14, 130 P.3d 302 (Div. 1 2006) (no exemption to the prohibition was permitted where the registrant's mileage records were accidentally destroyed).
- ⁴ Bob Hook Chevrolet Isuzu, Inc. v. Com. Transp. Cabinet, 983 S.W.2d 488 (Ky. 1998).

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III. Licensing, Taxation, and Registration

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§ 79. Character of vehicle or its use of highways; mileage—Motor carriers

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  45, 46, 49, 98

A.L.R. Library

[State regulation of motor vehicle rental \("you-drive"\) business](#), 60 A.L.R.4th 784

License or registration statutes may treat certain motor carriers as a special class for purposes of license or registration fees or taxes, such as motor carriers operating on fixed routes,¹ motor carriers for whose services a direct charge is made,² or motor carriers operating within the limits of municipalities.³ Classifications, in exacting license or registration fees, as between common motor carriers and private motor carriers,⁴ between motor carriers hauling products to and from farms and other motor carriers,⁵ or between motor carriers of passengers and motor carriers of property,⁶ have also been held not unconstitutionally discriminatory.

The International Registration Plan (IRP) is the interstate agreement on apportioning vehicle registration fees paid by motor carriers, developed by the American Association of Motor Vehicle Administrators.⁷ It is intended to promote uniformity, proportionality, and equitability in rental car registration among member jurisdictions.⁸ Under this plan, a state that is not participating (after September 30, 1996) in the IRP may not establish, maintain, or enforce a commercial motor vehicle registration law, regulation, or agreement that limits the operation in that state of a commercial motor vehicle that is not registered under the laws of the state, if the vehicle is registered under the laws of a state participating in the plan.⁹ A motor carrier's IRP fees are based on actual mileage traveled by the carrier in each jurisdiction during the preceding registration

year.¹⁰

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- ¹ Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), *aff'd*, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930).
- ² Dixie Ohio Exp. Co. v. State Revenue Commission of Georgia, 306 U.S. 72, 59 S. Ct. 435, 83 L. Ed. 495 (1939); Portland Van & Storage Co. v. Hoss, 139 Or. 434, 9 P.2d 122, 81 A.L.R. 1136 (1932).
- ³ Ex parte Hoffert, 34 S.D. 271, 148 N.W. 20 (1914).
As to the state's power to tax interstate motor carriers, see § 62.
- ⁴ Bekins Van Lines v. Riley, 280 U.S. 80, 50 S. Ct. 64, 74 L. Ed. 178 (1929); Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), *aff'd*, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930); Dresser v. City of Wichita, 96 Kan. 820, 153 P. 1194 (1915).
- ⁵ McReavy v. Holm, 166 Minn. 22, 206 N.W. 942 (1926).
- ⁶ State v. Black Hills Transp. Co., 71 S.D. 28, 20 N.W.2d 683 (1945).
- ⁷ 49 U.S.C.A. § 31701(4).
- ⁸ Budget Rent A Car Corp. v. Washington State Dept. of Licensing, 100 Wash. App. 381, 997 P.2d 420 (Div. 1 2000).
- ⁹ 49 U.S.C.A. § 31704.
- ¹⁰ In re Burlington Motor Holdings, Inc., 235 B.R. 741 (Bankr. D. Del. 1999).

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III. Licensing, Taxation, and Registration

A. Vehicles

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b. Particular Methods of Determining Amount

§ 80. Receipts or earnings of vehicle-owning entity

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  46, 98

Motor carrier license or registration fees or taxes based on the gross receipts or earnings of a motor transportation company have been upheld.¹ In the case of a company engaged in interstate commerce, where such a fee or tax is based on the percentage of the gross receipts or earnings attributable to the operation of the company in the state, and thereby reasonably reflects the use made of the highways of the state, it does not violate the Commerce Clause of the United States Constitution.² However, where such fees or taxes are imposed upon interstate motor carriers based upon the entire receipts of the motor transportation company, they place an invalid burden on interstate commerce in proportion to the mileage of the company outside the state.³

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¹ Alward v. Johnson, 282 U.S. 509, 51 S. Ct. 273, 75 L. Ed. 496, 75 A.L.R. 9 (1931); Bekins Van Lines v. Riley, 280 U.S. 80, 50 S. Ct. 64, 74 L. Ed. 178 (1929); Smallwood v. Jeter, 42 Idaho 169, 244 P. 149 (1926).

² Public Service Coordinated Transport v. State Tax Commission, 6 N.Y.2d 178, 189 N.Y.S.2d 137, 160 N.E.2d 448 (1959); ET & WNC Transp. Co. v. Currie, 248 N.C. 560, 104 S.E.2d 403 (1958), judgment aff'd, 359 U.S. 28, 79 S. Ct. 602, 3 L. Ed. 2d 625 (1959); Shirks Motor Exp. Corp. v. Messner, 375 Pa. 450, 100 A.2d 913 (1953). As to the effect of the commerce clause on the state's power to tax interstate motor carriers, generally, see §§ 62 to 65.

³ Central Greyhound Lines of N. Y. v. Mealey, 334 U.S. 653, 68 S. Ct. 1260, 92 L. Ed. 1633 (1948).

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III. Licensing, Taxation, and Registration

A. Vehicles

4. Collection, Disbursement, and Refund of Tax

§ 81. Collection

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  45, 48, 97, 100

A penalty may be exacted for the nonpayment of license or registration fees and taxes on the owners of motor vehicles required by statute, although the penalty is not a substitute for the fee or tax itself, so that the proper authorities may have recourse to the usual civil remedies for the collection of a debt, notwithstanding the assessment of such a penalty.¹ License or registration fees and taxes in some jurisdictions may become a lien upon the vehicle from the date on which they become due, and may be collected by seizure and sale of the vehicle.² The validity of such statutes has been upheld as against various constitutional objections.³ Under this type of statute, all taxes due on the vehicle must be paid before a repossession title may be obtained in a secured creditor's foreclosure action.⁴

Practice Tip:

When the legislature grants the motor vehicle licensing body the right to collect fees for certain out-of-state motor vehicles, it also implicitly grants the agency the power to audit the records of those within the scope of the statute.⁵

Where a statute provides that motor carrier tax liabilities abate where collection is barred by a statute of limitations, a tax warrant for delinquent motor carrier taxes becomes dormant and uncollectible after the proscribed time period has passed.⁶

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Footnotes

- ¹ State ex rel. Stubbs v. Wallace, 140 Ohio St. 166, 23 Ohio Op. 399, 42 N.E.2d 893 (1942).
- ² Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).
- ³ International Harvester Cr. Corp. v. Goodrich, 350 U.S. 537, 76 S. Ct. 621, 100 L. Ed. 681 (1956); Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).
- ⁴ First Federal Sav. Bank of South Dakota v. Trolinger, 441 N.W.2d 215 (S.D. 1989).
- ⁵ In re DeCato Bros., Inc., 149 Vt. 493, 546 A.2d 1354 (1988).
- ⁶ Director of Property Valuation, Div. of Property Valuation of Dept. of Revenue v. Golden Plains Exp., Inc., 13 Kan. App. 2d 48, 760 P.2d 1227 (1988).

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A. Vehicles

4. Collection, Disbursement, and Refund of Tax

§ 82. Disbursement

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  49, 101

In the absence of state constitutional limitations to the contrary, the proceeds from motor vehicle licensing or registration fees and taxes collected may be appropriated by the legislature to any public purpose, and by successive legislative acts, the appropriation of any particular fee or tax levy may be changed from one public purpose to another in the uncontrolled discretion of the legislature.¹ The fact that the statute imposing licensing or registration fees or taxes designates the particular public purpose for which the proceeds may be used instead of calling for the allocation of the proceeds to the general funds of the state does not violate due process of law.²

An annual fee exacted by the state for the registration of motor vehicles, the proceeds of which, after deductions for the support of the motor vehicle department, are devoted to the construction and maintenance of county and state roads, is not violative of the Due Process Clause as to motor vehicle owners operating principally or exclusively over city streets and paying a city license tax, the major portion of which is applied to the maintenance of city streets.³

A state may provide that a portion of license plate revenue be disbursed to qualifying political parties without violating the licensee's First Amendment rights; such a provision does not condition the availability of a public benefit on the surrender of First Amendment rights.⁴

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Footnotes

¹ State ex rel. Brown v. Bates, 198 S.C. 430, 18 S.E.2d 346 (1941).

² Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).

- ³ [Carley & Hamilton v. Snook](#), 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).
As to double taxation issues between state and municipalities imposing vehicle license tax or fees, see § 70.
- ⁴ [Libertarian Party of Indiana v. Packard](#), 741 F.2d 981 (7th Cir. 1984).

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7A Am. Jur. 2d Automobiles § 83

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Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

A. Vehicles

4. Collection, Disbursement, and Refund of Tax

§ 83. Refund of fees erroneously paid

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  50, 51, 102, 103

Forms

[Am. Jur. Legal Forms 2d § 33:30](#) (Application—For refund of registration fees erroneously paid)

Where motor vehicle license and registration fees are paid under protest, registration fees collected in excess of those prescribed by law should be refunded.¹ If the overpayment is made under pressure of severe statutory penalties or a disastrous effect upon one's business, such overpayment is "involuntary"; it may also be recovered to the extent that it is an overpayment.² A state is precluded from collecting registration fees in excess of the amount charged for a designated registration year, entitling a taxpayer to a refund of the amount improperly collected.³

Caution:

Subjection of the taxpayer to a misdemeanor conviction for nonpayment of tax does not make a payment involuntary, as is required for recovery of taxes under common-law refund theory, where the taxpayer had available the alternatives of a declaratory judgment action or making payment "under protest."⁴ The "business compulsion" test requires a showing that the taxing statute imposes an onerous burden for nonpayment, which potentially deprives the taxpayer of the right to do business.⁵

A payer of erroneous fees generally is not entitled to a refund where payment of such fees was not coerced.⁶ However, where the legislation under which a license tax has been collected is illegal and void, those who paid the license tax are entitled to a refund,⁷ regardless of whether the payment was involuntary. Unless statutorily authorized, refunds generally are not subject to the addition of interest.⁸

Practice Tip:

In seeking a refund, the procedural requirements for presentation of tax refund claims must be observed.⁹

A state will not be allowed to remedy its collection of a tax on vehicles purchased out-of-state that is invalid under the Commerce Clause by imposing a similar tax retroactively against vehicles purchased in-state, because the state is unlikely to be able to collect the tax from a substantial percentage of owners of such vehicles; the only clear and certain remedy for the collection of such an invalid tax is a full refund to all who paid it.¹⁰

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Footnotes

- ¹ Department of Motor Vehicles v. Greyhound Corp., 247 Md. 662, 234 A.2d 255 (1967); Fifth Ave. Coach Co. v. State, 73 Misc. 498, 131 N.Y.S. 62 (Ct. Cl. 1911).
- ² People ex rel. Carpentier v. Treloar Trucking Co., 13 Ill. 2d 596, 150 N.E.2d 624 (1958).
- ³ Yellow Transp., Inc. v. State, 257 Mich. App. 602, 669 N.W.2d 553 (2003).
- ⁴ Private Truck Council of America, Inc. v. State, 128 N.H. 466, 517 A.2d 1150 (1986).
- ⁵ Texas Nat. Bank of Baytown v. Harris County, 765 S.W.2d 823 (Tex. App. Houston 14th Dist. 1988), writ denied, (July 12, 1989).
- ⁶ Com. v. Green Motor Lines, Inc., 208 Va. 100, 155 S.E.2d 38 (1967).
- ⁷ Devine v. Mantua Tp., Gloucester County, 28 N.J. Super. 299, 100 A.2d 563 (Law Div. 1953); Private Truck Council of America, Inc. v. Oklahoma Tax Com'n, 1990 OK 54, 806 P.2d 598 (Okla. 1990), cert. granted, judgment vacated on other grounds, 501 U.S. 1247, 111 S. Ct. 2882, 115 L. Ed. 2d 1048 (1991) and judgment reinstated, 1994 OK 96, 879 P.2d 137 (Okla. 1994).
- ⁸ Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).
- ⁹ Dean v. State, 250 Kan. 417, 826 P.2d 1372 (1992); State ex rel. Brady Motorfrate, Inc. v. State Tax Commission, 517 S.W.2d 133 (Mo. 1974).
- ¹⁰ Department of Revenue v. Kuhnlein, 646 So. 2d 717 (Fla. 1994), as clarified, (Nov. 30, 1994). As to the illegality of such a tax, see § 63.

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III. Licensing, Taxation, and Registration

A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 84. Types of vehicles taxed, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [37](#), [56](#), [76](#), [79](#)

A.L.R. Library

[What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle, 27 A.L.R.4th 843](#)

Whether a particular vehicle is subject to licensing or registration requirements is dependent upon the terms of the licensing or registration enactments. Where the licensing or registration requirements are made applicable to “motor vehicles,” there is usually a statutory definition of the term “motor vehicles,” and only those vehicles that fall within the statutory definition, and were operated upon the highways during the licensing or registration period,¹ are subject to the licensing and registration requirements.²

An automobile that is not driven on the roads or highways, but is on stationary blocks in a garage,³ or is parked on private property for use as a storage shed,⁴ is not subject to registration.

A statute exempting certain vehicles from the motor vehicle registration provisions is not unconstitutional due to vagueness, where it is clear that the legislature’s intent is to require registration of all vehicles capable of regular travel on the roads of the state.⁵

CUMULATIVE SUPPLEMENT

Cases:

A school bus is not a for hire vehicle and thus is not a motor transportation business or urban transportation business which would be subject to public utility tax rather than general business and occupation tax. [Wash. Rev. Code Ann. §§ 82.04.290\(2\), 82.16.010\(6\), 82.16.010\(12\)](#). [First Student, Inc. v. Department of Revenue](#), 451 P.3d 1094 (Wash. 2019).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Hein-Werner Corp. v. Jackson Industries, Inc.](#), 364 Mass. 523, 306 N.E.2d 440 (1974); [Town of Ashland v. Board of Sup'rs for Hanover County](#), 202 Va. 409, 117 S.E.2d 679 (1961).
- ² [People v. Bay Ridge Operating Co.](#), 259 A.D. 260, 19 N.Y.S.2d 140 (1st Dep't 1940).
- ³ [Johnson v. Harris](#), 374 Ill. App. 3d 473, 312 Ill. Dec. 803, 871 N.E.2d 203 (3d Dist. 2007).
- ⁴ [Meraz v. Farmers Ins. Exchange](#), 92 Cal. App. 4th 321, 111 Cal. Rptr. 2d 804 (2d Dist. 2001), as modified on other grounds on denial of reh'g, (Oct. 5, 2001) (inoperative van).
- ⁵ [State v. Groves](#), 232 Kan. 66, 653 P.2d 457 (1982).

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III. Licensing, Taxation, and Registration

A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 85. Motor carriers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 76, 77

Licensing or registration enactments frequently are made applicable to motor carriers—that is, to vehicles operated for compensation or for hire—and the problem occasionally arises as to what vehicles are included within such provisions. Where a company transacts business in which trucks are used in delivering goods to customers without any direct charge for transportation, the cost of which is added to the overhead cost of the business, such transactions are not subject to a licensing or registration enactment intended to apply only to those who transport “for compensation.”¹ However, transactions in which a company delivering goods to customers makes a direct charge to them for the cost of transportation are within the contemplation of such a statute.² A motor carrier licensing statute is applicable to a business that transports its customers’ waste materials to landfills for disposal, despite the carrier’s claim that collection is its primary business, and that the transportation is merely incidental to its collection activities.³

An ordinance imposing a license fee upon persons operating motor trucks “for hire or compensation” on city streets does not to impose such a fee with respect to trucks operated by a chain grocery concern merely in delivering stock to local stores from its warehouse in another city, and not transporting freight for others.⁴

The existence of an adequate and satisfactory service by motor carriers already in the area completely negates the public need and demand for added service by another carrier.⁵ However, proof of adequate market service does not generally bar entry of new applicants for a common carrier certificate of public convenience.⁶

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Footnotes

- ¹ Collins-Dietz-Morris Co. v. State Corp. Com'n, 1931 OK 301, 154 Okla. 121, 7 P.2d 123, 80 A.L.R. 561 (1931).
- ² Collins-Dietz-Morris Co. v. State Corp. Com'n, 1931 OK 301, 154 Okla. 121, 7 P.2d 123, 80 A.L.R. 561 (1931).
- ³ Browning-Ferris, Inc. v. Com., 225 Va. 157, 300 S.E.2d 603 (1983).
- ⁴ Kroger Grocery & Baking Co. v. City of Cynthiana, 240 Ky. 701, 42 S.W.2d 904 (1931).
- ⁵ Application of Nebraskaland Leasing & Associates, 254 Neb. 583, 578 N.W.2d 28 (1998).
As to certificates of public convenience and necessity for carriers, generally, see Am. Jur. 2d, Carriers §§ 112 to 129.
- ⁶ Capital City Cab Service v. Pennsylvania Public Utility Com'n, 138 A.3d 119 (Pa. Commw. Ct. 2016), appeal denied, 2016 WL 7407489 (Pa. 2016).

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7A Am. Jur. 2d Automobiles § 86

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A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 86. Motor carriers—Carriers of passengers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [37](#), [73](#), [76](#) to [78](#)

Municipalities generally are authorized to regulate and license taxi services within their borders.¹

In many jurisdictions, in order to receive authority to operate a motor vehicle passenger service, one must show that the public convenience and necessity require such service.² Before the responsible state agency makes a finding of public convenience and necessity, it must determine that existing service is substantially inadequate.³

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Footnotes

¹ [Atlanta Taxicab Co. Owners Ass'n, Inc. v. City of Atlanta](#), 281 Ga. 342, 638 S.E.2d 307 (2006); [People v. Kadar](#), 14 Misc. 3d 857, 831 N.Y.S.2d 826 (N.Y. City Ct. 2006).

² [Am. Jur. 2d, Carriers](#) §§ 112 to 129.

³ [Durango Transp., Inc. v. Colorado Public Utilities Com'n](#), 122 P.3d 244 (Colo. 2005); [In re Robert's Tours & Transp., Inc.](#), 104 Haw. 98, 85 P.3d 623 (2004).

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III. Licensing, Taxation, and Registration


A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 87. Farm vehicles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 78

A.L.R. Library

[What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle, 27 A.L.R.4th 843](#)

A statute that imposes taxes on motor carriers and provides special treatment for farm vehicles is not special or local legislation in violation of a state constitutional prohibition against such legislation; the classification of farm trucks as a separate class of motor carriers is a reasonable classification and a legitimate exercise of legislative judgment, in that farmers use vehicles to transport products and supplies necessary to and produced in the course of the farming operation, while other motor carriers use roads as the primary place on which their business is conducted.¹

Under statutes that exempt “implements of husbandry,” or “farm machinery” from the registration requirements for motor vehicles, vehicles that are exempt include—

- motortrucks adapted for and used solely in delivering and applying anhydrous ammonia and liquid fertilizer²
- trucks designed and used exclusively for the purpose of carting water for irrigation on the owner’s land and the land of others which the owner of the trucks had contracted to irrigate³
- tank trucks carrying oil and gasoline to tractors in the orchards and fields⁴
- farm trailers⁵

However, other vehicles are not exempt from motor vehicle registration requirements under statutory exceptions for farm

vehicles, implements of husbandry, machines used in agriculture, and the like, including—

- spray rigs used in a pest control business⁶
- tank trailers used for the transportation of chemical fertilizer⁷
- three-wheeled off-road vehicles⁸
- single-axle semitractors⁹
- trucks modified by the attachment of fertilizer-spreading equipment¹⁰
- lawn tractors not used exclusively for agricultural purposes¹¹

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Footnotes

- ¹ American Trucking Ass'n, Inc. v. Com., Transp. Cabinet, 676 S.W.2d 785 (Ky. 1984).
- ² State v. Bishop, 257 Iowa 336, 132 N.W.2d 455 (1965).
- ³ Allred v. J.C. Engelman, Inc., 123 Tex. 205, 61 S.W.2d 75, 91 A.L.R. 417 (1933).
- ⁴ Allred v. J.C. Engelman, Inc., 123 Tex. 205, 61 S.W.2d 75, 91 A.L.R. 417 (1933).
- ⁵ State v. Herman, 87 Ohio L. Abs. 513, 181 N.E.2d 331 (Mun. Ct. 1958).
- ⁶ Sohner v. Mason, 136 Cal. App. 2d 449, 288 P.2d 616 (3d Dist. 1955).
- ⁷ Mid-South Chemical Corp. v. Carpentier, 14 Ill. 2d 514, 153 N.E.2d 72 (1958).
- ⁸ Conway v. Evans, 549 N.E.2d 1092 (Ind. Ct. App. 1990).
- ⁹ North Star Mut. Ins. Co. v. Carlson, 442 N.W.2d 848 (Minn. Ct. App. 1989).
- ¹⁰ State v. Conner, 13 Ohio App. 3d 179, 468 N.E.2d 320 (2d Dist. Darke County 1983).
- ¹¹ People v. Canute, 8 A.D.3d 1125, 778 N.Y.S.2d 247 (4th Dep't 2004) (defendant was operating the lawn tractor en route from a bar to his home in the early morning hours).

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III. Licensing, Taxation, and Registration

A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 88. Equipment and machinery using roads only incidentally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 78

Construction equipment mounted on wheels ordinarily is not subject to motor vehicle licensing or registration requirements, such equipment being expressly or impliedly exempted from such requirements.¹

Under an exemption for power shovels, a front-end loader is exempt.² On the other hand, under an exemption for self-propelled cranes and road machinery, cement trucks are not included.³ Also, under an exemption for vehicles engaged exclusively in road construction, repair, and maintenance, maintenance trucks and dump trucks are not included where they are used by contractors temporarily engaged in rebuilding a road.⁴

Vehicles such as certain large items of construction equipment,⁵ motor-driven, self-propelled forklifts used exclusively on private property,⁶ portable grinding mills mounted on vehicles,⁷ and electrically operated cranes permanently mounted on an electric truck with four small wheels,⁸ have been held exempt under exemptions for vehicles only incidentally or temporarily operated on the highway. Vehicles that have been held not exempt under such provisions include a mobile home,⁹ a forklift truck,¹⁰ the trailer-like structures known as relocatable offices,¹¹ and concrete trucks.¹²

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Footnotes

¹ [People v. Bay Ridge Operating Co.](#), 259 A.D. 260, 19 N.Y.S.2d 140 (1st Dep't 1940).

² [People v. Felder](#), 116 N.Y.S.2d 39 (Magis. Ct. 1952).

³ [State v. Groves](#), 232 Kan. 66, 653 P.2d 457 (1982).

- ⁴ White Bros. Const. Co. v. Oregon State Police, 246 Or. 106, 424 P.2d 221 (1967).
- ⁵ Gibbons & Reed Co. v. Dept. of Motor Vehicles, 220 Cal. App. 2d 277, 33 Cal. Rptr. 688 (1st Dist. 1963), opinion supplemented, 220 Cal. App. 2d 277, 33 Cal. Rptr. 927 (1st Dist. 1963) and (disapproved of on other grounds by, Mass v. Board of Ed. of San Francisco Unified School Dist., 61 Cal. 2d 612, 39 Cal. Rptr. 739, 394 P.2d 579 (1964)) and (disapproved of on other grounds by, Olson v. Cory, 35 Cal. 3d 390, 197 Cal. Rptr. 843, 673 P.2d 720 (1983)).
- ⁶ Travelers Indem. Co. v. Transport Indem. Co., 242 Cal. App. 2d 227, 51 Cal. Rptr. 724 (1st Dist. 1966) (disapproved of on other grounds by, Argonaut Ins. Co. v. Transport Indem. Co., 6 Cal. 3d 496, 99 Cal. Rptr. 617, 492 P.2d 673 (1972)) and (disapproved of on other grounds by, State Farm Mut. Auto. Ins. Co. v. Jacober, 10 Cal. 3d 193, 110 Cal. Rptr. 1, 514 P.2d 953 (1973)).
- ⁷ State v. Griswold, 225 Iowa 237, 280 N.W. 489 (1938).
- ⁸ People v. Bay Ridge Operating Co., 259 A.D. 260, 19 N.Y.S.2d 140 (1st Dep't 1940).
- ⁹ Newell v. National Bank of Alaska, 646 P.2d 224, 34 U.C.C. Rep. Serv. 767, 27 A.L.R.4th 835 (Alaska 1982).
- ¹⁰ Davis v. Pine Mountain Lumber Co., 273 Cal. App. 2d 218, 77 Cal. Rptr. 825 (3d Dist. 1969).
- ¹¹ Mobilease Corp. v. County of Orange, 42 Cal. App. 3d 461, 116 Cal. Rptr. 864 (4th Dist. 1974).
- ¹² Crown Concrete Co. v. Conkling, 247 Iowa 609, 75 N.W.2d 351 (1956); Davidson v. Hare, 351 Mich. 4, 87 N.W.2d 131 (1957).

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III. Licensing, Taxation, and Registration

A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 89. Motorcycles, dirt bikes, all-terrain vehicles, and the like

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 78

Motorcycles generally are subject to motor vehicle licensing or registration statutes,¹ with some licensing or registration statutes making specific requirements as to motorcycles.²

A dirt bike (a motorcycle designed for off-road use) is a vehicle subject to the motor vehicle registration requirements when it is operated on a public highway, and the fact that the dirt bike cannot be registered because it lacks the required safety equipment does not excuse it from the registration requirement.³

All-terrain vehicles are not subject to registration if used on an easement providing a right-of-way for access to property.⁴

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Footnotes

¹ [Nationwide Mut. Ins. Co. v. Worthey](#), 314 Ark. 185, 861 S.W.2d 307 (1993).

² [Landwehr v. Continental Life Ins. Co.](#), 159 Md. 207, 150 A. 732, 70 A.L.R. 1249 (1930).

³ [Com., Dept. of Transp., Bureau of Driver Licensing v. Lear](#), 151 Pa. Commw. 138, 616 A.2d 185 (1992).

⁴ [Northern Sec. Ins. Co., Inc. v. Rossitto](#), 171 Vt. 580, 762 A.2d 861 (2000).

Works.

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III. Licensing, Taxation, and Registration

A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 90. Vehicles of nonresidents

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 78

It is customary for a state to permit nonresidents to operate their vehicles for limited periods within its boundaries without complying with its licensing or registration requirements, where such vehicles have been properly licensed or registered in the state of domicile of the owners.¹ Reciprocal provisions are contained in state statutes, basing the exemption for nonresidents on the condition that the state of the nonresident make a similar provision as to residents of the state.² Equal protection of the law is not denied by exempting nonresidents from a state tax on motor vehicles for the privilege of using the highways, provided that the states of their residence reciprocate and grant a like exemption to citizens of the taxing state.³

A question of construction exists as to who is a resident or nonresident within the meaning of statutes exempting from motor vehicle licensing or registration requirements vehicles owned by nonresidents. Foreign corporations doing business in a state are not considered to be nonresidents within the meaning of such statutes,⁴ the effect of such an interpretation being to narrow the exemption in reference to motor carriers for hire.⁵ Nor is a domestic corporation doing business in the state whose motor vehicles are based in another considered to be a nonresident within the meaning of such statutes; rather, it must comply with the licensing or registration laws of the state of its incorporation insofar as such vehicles are operated upon the highways of that state.⁶ Nonresidents who have accepted employment or are engaged in any trade, profession, or occupation in the state are sometimes not entitled to exemptions from licensing or registration requirements accorded nonresidents.⁷

In some jurisdictions, a foreign rental car agency that owns a vehicle that is registered and rented to an operator out-of-state does not have a duty to register the vehicle in a state to which the operator drives the vehicle.⁸

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Footnotes

- ¹ U.S. v. Mounts, 35 F.3d 1208 (7th Cir. 1994).
- ² Shuba v. Greendonner, 271 N.Y. 189, 2 N.E.2d 536 (1936).
- ³ Bode v. Barrett, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953).
- ⁴ Gondek v. Cudahy Packing Co., 233 Mass. 105, 123 N.E. 398 (1919).
- ⁵ Reeves v. Deisenroth, 288 Ky. 724, 157 S.W.2d 331, 138 A.L.R. 1493 (1941).
- ⁶ State v. Garford Trucking, 4 N.J. 346, 72 A.2d 851, 16 A.L.R.2d 1407 (1950).
- ⁷ Harper v. England, 124 Fla. 296, 168 So. 403 (1936).
- ⁸ Lopes v. Phillips, 680 A.2d 65 (R.I. 1996).

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§ 91. Governmental vehicles; vehicles transporting mail

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 78

The fact that a motor vehicle is owned by a governmental unit or is used in connection with governmental services does not necessarily exempt it from motor vehicle licensing or registration requirements.¹ The state may impose a license fee or tax upon the motor vehicles of a municipality.² One contracting to transport United States mail is not absolved from the duty of obtaining state licenses for motor trucks used in the business.³

However, statutes relating to motor vehicle licensing or registration frequently exempt public or governmental vehicles or vehicles engaged in the performance of governmental services. For example, the state may properly exempt from its requirements as to the licensing or registration of motor vehicles those vehicles owned and operated by the federal government,⁴ and the right of a federal instrumentality to operate its vehicles on state highways in the conduct of its business without paying the state motor vehicle license tax has been judicially recognized.⁵ The exemption for vehicles used exclusively in carrying United States mail from the operation of a statute imposing a tax for revenue upon motor vehicles operating for hire is justified by the public interest.⁶ An exemption of the gross weight of United States mail transported in any motor vehicle from a ton-mile tax imposed upon contract motor carriers and private motor carriers for hire is not inimical to a constitutional requirement that all general laws have uniform operation.⁷

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Footnotes

¹ Ex parte Marshall, 75 Fla. 97, 77 So. 869 (1918).

² State v. Preston, 103 Or. 631, 206 P. 304, 23 A.L.R. 414 (1922).

- ³ State v. Johnson, 75 Mont. 240, 243 P. 1073 (1926); State v. Wiles, 116 Wash. 387, 199 P. 749, 18 A.L.R. 1163 (1921).
- ⁴ State v. Preston, 103 Or. 631, 206 P. 304, 23 A.L.R. 414 (1922).
- ⁵ Roberts v. Federal Land Bank of New Orleans, 189 Miss. 898, 196 So. 763 (1940).
- ⁶ Kelly v. Finney, 207 Ind. 557, 194 N.E. 157 (1935).
- ⁷ Public Service Commission of Wyoming v. Grimshaw, 49 Wyo. 158, 53 P.2d 1, 109 A.L.R. 534 (1935).

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III. Licensing, Taxation, and Registration

A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 92. Vehicles of military personnel and veterans

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 78

The Servicemembers Civil Relief Act¹ provides that for purposes of taxation, including licenses, fees, or excises imposed with respect to motor vehicles and their use, one is not deemed to have lost or acquired a residence or domicile in any state or political subdivision solely by reason of being absent therefrom in compliance with military orders, or to have acquired a residence in any other state or political subdivision while being so absent, provided that the license, fee, or excise required by the state of which the person is a resident or in which he or she is domiciled has been paid.² A member of the Armed Forces who is on duty in a state or political subdivision thereof is not exempt from paying license fees where he or she has not paid the license fees of the domicile, but the host state may not impose taxes other than licenses, fees, or excises even though the member has not paid corresponding taxes to his or her home state.³ On the other hand, if the armed services member satisfies the requirements of another state with regard to the licensing and registration of a motor vehicle, he or she cannot be required to pay a registration fee to his or her domiciliary state.⁴

The fact that a motor vehicle is owned by a veteran who is exempted from the payment of property taxes does not relieve him or her of the obligation of paying a motor vehicle license tax.⁵

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Footnotes

¹ 50 U.S.C.A. §§ 3901 to 4043.

² 50 U.S.C.A. § 4001.

³ *California v. Buzard*, 382 U.S. 386, 86 S. Ct. 478, 15 L. Ed. 2d 436 (1966).

⁴ People v. Buzard, 61 Cal. 2d 833, 40 Cal. Rptr. 681, 395 P.2d 593 (1964), judgment aff'd, 382 U.S. 386, 86 S. Ct. 478, 15 L. Ed. 2d 436 (1966).

⁵ Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).

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III. Licensing, Taxation, and Registration

A. Vehicles

6. Name in Which Vehicle Is Registered

§ 93. Name in which vehicle is registered, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  31 to 36, 78, 79, 86, 105

Forms

[Am. Jur. Legal Forms 2d § 33:13](#) (Power of attorney—To register or transfer motor vehicle)

Under motor vehicle licensing and registration statutes, the registration of a motor vehicle in the name of one other than the owner is illegal,¹ and a motor vehicle so registered is unlawfully upon the highway.²

The courts traditionally have been quite strict in their requirement as to the form of the name used to identify the owner of a motor vehicle under the licensing or registration laws.³ For example, the registration of a motor vehicle in the name of a child of a dealer, where the child actually conducts the business as agent for his or her father, is illegal,⁴ as is the registration of a motor vehicle in the maiden name of a married owner.⁵ Where the application for registration of a motor vehicle properly sets forth the name of the owner, but the registration is not completed until after the owner's death, the registration of such vehicle in the name of the deceased owner is illegal.⁶ However, the word "owner" as used in such statutes is not a technical term. It is not confined to the sole owner of, or a person having an absolute right in, a motor vehicle,⁷ and in some circumstances at least may apply to a part owner⁸ or a conditional purchaser⁹ of a motor vehicle. For some purposes, a person may be considered the owner of a vehicle even though he or she does not have legal title.¹⁰

Where spouses own a vehicle, the fact that one of the spouses is excluded from the automobile liability policy does not prevent that spouse from obtaining registration in his or her own name.¹¹

Caution:

Registration of a vehicle in a particular name creates a rebuttable presumption in some jurisdictions that the named entity is the owner of the vehicle.¹²

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Footnotes

- ¹ Balian v. Ogassian, 277 Mass. 525, 179 N.E. 232, 78 A.L.R. 1021 (1931).
- ² Love v. Worcester Consol. St. Ry. Co., 213 Mass. 137, 99 N.E. 960 (1912).
- ³ Bacon v. Boston Elevated Ry. Co., 256 Mass. 30, 152 N.E. 35, 47 A.L.R. 1100 (1926).
- ⁴ Gould v. Elder, 219 Mass. 396, 107 N.E. 59 (1914).
- ⁵ Bacon v. Boston Elevated Ry. Co., 256 Mass. 30, 152 N.E. 35, 47 A.L.R. 1100 (1926).
- ⁶ Fairbanks v. Kemp, 226 Mass. 75, 115 N.E. 240 (1917).
- ⁷ Burns v. Winchell, 305 Mass. 276, 25 N.E.2d 752 (1940).
- ⁸ § 94.
- ⁹ § 97.
- ¹⁰ Government Employees Ins. Co. v. Superior Court, 79 Cal. App. 4th 95, 93 Cal. Rptr. 2d 820 (4th Dist. 2000).
- ¹¹ Neale v. Wright, 322 Md. 8, 585 A.2d 196 (1991).
- ¹² Employers Cas. Co. v. Employers Commercial Union Ins. Co., 632 F.2d 1215 (5th Cir. 1980); Arneson v. Integrity Mut. Ins. Co., 344 N.W.2d 617 (Minn. 1984); Perry v. Breland, 16 S.W.3d 182 (Tex. App. Eastland 2000).

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III. Licensing, Taxation, and Registration

A. Vehicles

6. Name in Which Vehicle Is Registered

§ 94. Part owners

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [32](#), [33](#), [79](#)

Statutes that make no specific provision as to the registration of jointly owned motor vehicles, but require merely that registration be in the name of the owner, are not construed as absolutely excluding a valid registration in the name of a part owner.¹ The fact that a motor vehicle is registered in the name of a person who is only part owner does not invalidate the registration—his or her rights are protected so long as he or she operates or is present in the vehicle.² For registration by a part owner to be lawful, it must be in the name of the part owner operating and having control of the car.³

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Footnotes

¹ [Burns v. Winchell](#), 305 Mass. 276, 25 N.E.2d 752 (1940).

² [Harlow v. Sinman](#), 241 Mass. 462, 135 N.E. 553 (1922).

³ [Balian v. Ogassian](#), 277 Mass. 525, 179 N.E. 232, 78 A.L.R. 1021 (1931).

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III. Licensing, Taxation, and Registration

A. Vehicles

6. Name in Which Vehicle Is Registered

§ 95. Partnerships

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [32](#), [33](#), [78](#), [79](#)

In jurisdictions in which a partnership is regarded as a legal entity distinct from the persons who comprise it,¹ a partnership that owns or controls a motor vehicle should register it in the partnership name, and the registration of a motor vehicle owned by a partnership in the name of a single partner is illegal.²

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Footnotes

¹ [Am. Jur. 2d, Partnership §§ 5 to 7.](#)

² [Kilduff v. Boston Elevated Ry. Co., 247 Mass. 453, 142 N.E. 98 \(1924\).](#)

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III. Licensing, Taxation, and Registration

A. Vehicles

6. Name in Which Vehicle Is Registered

§ 96. Unincorporated associations

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [32](#), [33](#), [78](#), [79](#)

In accord with the general rule that, in the absence of a statute providing otherwise, an unincorporated association has no legal existence and cannot take and hold property in its name,¹ the registration of a motor vehicle owned by an unincorporated association must be made in the name of the members of the association, and the registration of such vehicle in the name of the association is illegal.² Even assuming a registration embraces all the members at the time it is filed, it is invalidated by changes in the membership, under a statute making the registration expire upon a transfer of ownership.³

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Footnotes

¹ Am. Jur. 2d, Associations and Clubs § 12.

² Hanley v. American Ry. Exp. Co., 244 Mass. 248, 138 N.E. 323 (1923).

³ Hanley v. American Ry. Exp. Co., 244 Mass. 248, 138 N.E. 323 (1923).

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III. Licensing, Taxation, and Registration

A. Vehicles

6. Name in Which Vehicle Is Registered

§ 97. Buyer or seller under conditional sales contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [32](#), [35](#), [78](#), [79](#)

The registration of a motor vehicle in the name of the buyer under a conditional sales contract generally is held to be a valid registration under statutes requiring registration to be in the name of the owner.¹

In some jurisdictions, however, the interest that the seller has in a motor vehicle sold under a contract of conditional sale is held to qualify the seller as an owner so as to permit a valid registration of the vehicle in the seller's name.²

Statutes in some jurisdictions permit a buyer to use the dealer's license plates for a short period after the sale of the vehicle.³ A dealer who permits a buyer to use the dealer's plates for longer than the prescribed period is estopped from denying ownership of the vehicle and will be vicariously liable for negligence of the buyer in the vehicle's operation.⁴

Practice Tip:

The ownership of a motor vehicle passes to the buyer upon delivery of possession, even though the seller transfers the title at some time after sale and the state issues a certificate of title some time after that.⁵

Footnotes

- ¹ Bohmann v. Perrett, 97 Conn. 571, 118 A. 42 (1922); Hurnanen v. Nicksa, 228 Mass. 346, 117 N.E. 325 (1917).
- ² Temple v. Middlesex & B. St. R. Co., 241 Mass. 124, 134 N.E. 641 (1922).
- ³ Getz v. Searles, 265 A.D.2d 839, 695 N.Y.S.2d 637 (4th Dep't 1999).
- ⁴ Getz v. Searles, 265 A.D.2d 839, 695 N.Y.S.2d 637 (4th Dep't 1999).
- ⁵ Webb v. Union Ins. Co., 1996 SD 141, 556 N.W.2d 669 (S.D. 1996).

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III. Licensing, Taxation, and Registration


A. Vehicles

7. Suspension or Revocation of Certificates of Registration

§ 98. Suspension or revocation of certificates of registration; generally

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  55, 106

A motor vehicle license or certificate of registration may be revoked or suspended under proper legislation,¹ for any reason that would have authorized a refusal to issue it in the first instance. Such licenses or certificates generally are subject to suspension or revocation where the motor vehicle does not pass inspection requirements or where the vehicle operates in violation of statutory weight and load limitations.²

Practice Tip:

In some jurisdictions where the suspension or revocation of a motor vehicle license or certificate of registration is based upon convictions for certain offenses, the courts are required to warn motorists that a plea of guilty to such offenses is equivalent to a conviction after trial and that if they are convicted, such licenses or certificates may be subject to suspension or revocation.³ In general, a motor vehicle license or certificate of registration may not be suspended or revoked in such jurisdictions because of a conviction unless such a warning has been given.⁴

Once the state has established a prima facie case for suspending a vehicle registration, the burden shifts to the registrant, who must prove the applicability of certain exceptions to suspension.⁵

An automatic suspension of vehicle registration for refusal to submit to a chemical breath test, without a hearing to allow the

vehicle's driver to furnish proof of financial responsibility to avoid suspension, violates the driver's due process rights, even though the state could suspend the driver's license without a prior hearing, because permitting a potential traffic offender to maintain his or her vehicle registration does not trigger the state's interest in keeping highways safe that justifies the summary suspension of the drivers' licenses of suspected drunk drivers.⁶

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Footnotes

- ¹ [Horger v. Flagg](#), 185 Or. 109, 201 P.2d 515 (1948); [Butler v. Com.](#), 189 Va. 411, 53 S.E.2d 152 (1949).
- ² §§ 220, 221.
- ³ [People v. Duell](#), 1 N.Y.2d 132, 151 N.Y.S.2d 15, 134 N.E.2d 106 (1956).
- ⁴ [People v. Duell](#), 1 N.Y.2d 132, 151 N.Y.S.2d 15, 134 N.E.2d 106 (1956); [Brown v. Rhode Island Dept. of Transp.](#), 638 A.2d 1052 (R.I. 1994).
As to the annulment of suspension or revocation where a warning is not given, see § 99.
- ⁵ [Johnson v. Com.](#), 816 A.2d 1257 (Pa. Commw. Ct. 2003).
- ⁶ [Levesque v. Rhode Island Dept. of Transp.](#), 626 A.2d 1286 (R.I. 1993).
As to suspension of drivers' licenses for failure to submit to an intoxication test, see §§ 125 to 138.

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III. Licensing, Taxation, and Registration


A. Vehicles

7. Suspension or Revocation of Certificates of Registration

§ 99. Judicial review

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  55, 106

Statutory provision has been made for judicial review of administrative acts suspending or revoking motor vehicle licenses or certificates of registration—the statutes requiring courts, for example, to sustain the determination of the suspending or revoking officers as to the suspension or revocation of such licenses or certificates where there is substantial evidence to support the determination, but annulling the determination where such evidence is lacking.¹ In addition, where it is found that the court in convicting a motorist of a certain offense upon which the revocation of his or her motor vehicle license or certificate of registration is based did not give him or her warning of the consequences of such conviction as required by law, any order suspending or revoking such license or certificate must be annulled.²

In reviewing the trial court's judgment regarding a state agent's decision to suspend an owner's vehicle registration for submitting false proof of insurance, an appellate court reviews the trial court's judgment and not the decision of the state agent.³ An appellate court's review of a trial court order that sustained a statutory appeal from a suspension of motor vehicle registration for lack of insurance is limited to determining whether the court committed a reversible error of law, abused its discretion, or made necessary findings of fact that are not supported by substantial evidence.⁴

Practice Tip:

Where an administrative law judge sits as a finder of fact and renders a determination on the revocation of a license after an evidentiary hearing, a reviewing court should not consider evidence that was not presented at the administrative hearing.⁵

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Footnotes

- ¹ [Almgren v. Fletcher](#), 304 N.Y. 547, 110 N.E.2d 396 (1953).
As to court review of administrative decisions, generally, see [Am. Jur. 2d, Administrative Law §§ 383 to 559](#).
- ² [De Martino v. Mealey](#), 284 N.Y. 231, 30 N.E.2d 486 (1940).
As to the requirement of a warning, see [§ 98](#).
- ³ [Hudson v. Director of Revenue, State of Missouri](#), 216 S.W.3d 216 (Mo. Ct. App. W.D. 2007).
- ⁴ [McGonigle v. Com., Dept. of Transp., Bureau of Motor Vehicles](#), 37 A.3d 1273 (Pa. Commw. Ct. 2012), as amended, (May 8, 2012).
- ⁵ [McMahon v. Iowa Dept. of Transp., Motor Vehicle Div.](#), 522 N.W.2d 51 (Iowa 1994).

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III. Licensing, Taxation, and Registration

B. Drivers or Operators


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A.L.R. Index, Driver's Licenses
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III. Licensing, Taxation, and Registration

B. Drivers or Operators

1. In General

§ 100. Drivers or operators; generally

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [130](#), [132](#), [136](#) to [143](#)

The legislature is permitted to place conditions on the privilege to drive on the state's highways and roads.¹ As such, statutes have been enacted in the states requiring drivers or operators of motor vehicles to obtain a license as a condition of the right to drive on the public highways.² Such statutes are designed to promote safe driving and to protect the traveling public.³

Licensing requirements are to be liberally construed so that the greatest force and effect may be given them.⁴

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Footnotes

¹ [Staggs v. Director of Revenue](#), 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007).

² [City of Miami v. Aronovitz](#), 114 So. 2d 784 (Fla. 1959); [City of Cincinnati v. Wright](#), 77 Ohio App. 261, 33 Ohio Op. 23, 47 Ohio L. Abs. 89, 67 N.E.2d 358 (1st Dist. Hamilton County 1945); [Taylor v. State](#), 151 Tex. Crim. 568, 209 S.W.2d 191 (1948).
As to civil liability arising from a driver's failure to comply with such statutes, see §§ [717](#) to [720](#).

³ [Wysock v. Borchers Bros.](#), 104 Cal. App. 2d 571, 232 P.2d 531, 29 A.L.R.2d 948 (1st Dist. 1951); [State, Dept. of Motor Vehicles and Public Safety v. Miles](#), 111 Nev. 681, 895 P.2d 1316 (1995); [State ex rel. Schwartz v. Kennedy](#), 1995-NMSC-069, 120 N.M. 619, 904 P.2d 1044 (1995); [Gaebel v. New York State Dept. of Motor Vehicles](#), 43 Misc. 3d 185, 976 N.Y.S.2d 816 (Sup 2013); [State v. Ceasar](#), 2010 OK CR 15, 237 P.3d 792 (Okla. Crim. App. 2010).

⁴ [Padgett v. Thompson](#), 158 Fla. 138, 27 So. 2d 909 (1946).

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III. Licensing, Taxation, and Registration


B. Drivers or Operators

1. In General

§ 101. Liability for negligent licensing

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A.L.R. Library

[State's liability to one injured by improperly licensed driver, 41 A.L.R.4th 111](#)

Licensing a motor vehicle operator does not render a government entity issuing such a license a guarantor of the driver's competence to drive a motor vehicle.¹ When reasonable procedures to examine the relevant qualifications and fitness of applicants for motor vehicle operator licenses are followed, there is no reason for predicated liability on the issuance of a driver's license.² However, where the licensing agency fails to follow the procedures adopted for issuance of licenses by failing to examine the competence of an applicant before issuing such a license, the agency's conduct constitutes negligence so as to render it liable for contribution to a settlement of claims arising out of a fatal accident involving such a licensee.³ The state may be held liable for contributing to an injury where the driver's physical condition should have put the agency on notice that a thorough driving test was warranted when he or she applied for a license.⁴

The failure to revoke one's driver's license is too remote and insubstantial a factor to impose liability for that person's drunk driving on the licensing agency, even though the driver is subject to license revocation, where no special relationship or privity exists between the government agent and either the intoxicated driver or the victim of the driver's negligence.⁵ Government officials have been found to have absolute immunity from tort liability for allegedly negligently issuing a license to a driver who is incapacitated, where those officials act as agents of the state motor vehicle department in collecting and transmitting applications for licenses.⁶

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Footnotes

- ¹ First Ins. Co. of Hawaii, Ltd. v. International Harvester Co., 66 Haw. 185, 659 P.2d 64 (1983).
- ² First Ins. Co. of Hawaii, Ltd. v. International Harvester Co., 66 Haw. 185, 659 P.2d 64 (1983).
The motor vehicle department has no duty to make periodic inquiries into a driver's medical condition. *Johnson v. Department of Public Safety*, 627 So. 2d 732 (La. Ct. App. 2d Cir. 1993), writ denied, 635 So. 2d 1107 (La. 1994).
- ³ First Ins. Co. of Hawaii, Ltd. v. International Harvester Co., 66 Haw. 185, 659 P.2d 64 (1983); *Bockelman v. State, Dept. of Transp.*, 366 N.W.2d 550 (Iowa 1985).
- ⁴ *White v. State Through Dept. of Public Safety & Corrections*, 644 So. 2d 684 (La. Ct. App. 1st Cir. 1994), writ denied, 648 So. 2d 927 (La. 1995).
- ⁵ *Hartley v. State*, 103 Wash. 2d 768, 698 P.2d 77 (1985).
- ⁶ *Rutledge v. Baldwin County Com'n*, 495 So. 2d 49 (Ala. 1986).

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7A Am. Jur. 2d Automobiles § 102

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

1. In General

§ 102. Power to license; constitutional limitations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [130](#), [132](#), [136](#)

The state has the power to require the procurement of a license before one may operate a motor vehicle on the public highways.¹ This power to license carries with it the power to prescribe reasonable conditions precedent to the issuance of such licenses,² and to classify drivers for special regulation, provided such classifications are not unreasonable or arbitrary.³

Regulations pertaining to the issuance of motor vehicle drivers' licenses constitute an exercise of the police power to regulate the use of the highways in the interest of the public safety and welfare.⁴ In accepting a driver's license from a state, one must accept and agree to abide by all reasonable conditions imposed by the state.⁵

A statute mandating that every person who operates a motor vehicle on public roads must have a valid operator's license, unless he or she is exempted by statute, does not impermissibly infringe upon a citizen's right to travel.⁶ Such statutes are not unconstitutional on the ground that they abridge the privileges of citizens.⁷

A statute requiring the surrender of all valid operator's licenses issued by other jurisdictions as a prerequisite to issuance of a new driver's license is not violative of due process.⁸

A licensing requirement for drivers does not constitute an unconstitutional burden on the free exercise of religion where it is the least restrictive means for achieving the compelling state interest in the reasonable regulation of the public roadways.⁹ However, a driver's licensing requirement that an applicant submit to having a color photograph taken for affixing on the license may unconstitutionally burden an applicant's free exercise of sincerely held religious beliefs.¹⁰

Footnotes

- ¹ Lite v. State, 617 So. 2d 1058 (Fla. 1993); RBC Capital Markets Corp. v. Bittner, 24 Misc. 3d 728, 877 N.Y.S.2d 877 (Sup 2009); State v. Stuart, 544 N.W.2d 158 (N.D. 1996); State v. Hoover, 123 Ohio St. 3d 418, 2009-Ohio-4993, 916 N.E.2d 1056 (2009); Price v. Reed, 1986 OK 43, 725 P.2d 1254 (Okla. 1986); Hanson v. State, 673 P.2d 657 (Wyo. 1983).
- ² Sheehan v. Division of Motor Vehicles of State of California, 140 Cal. App. 200, 35 P.2d 359 (4th Dist. 1934); Maumee v. Anistik, 69 Ohio St. 3d 339, 1994-Ohio-157, 632 N.E.2d 497 (1994); Smith v. Cox, 609 P.2d 1332 (Utah 1980).
- ³ Ex parte Stork, 167 Cal. 294, 139 P. 684 (1914).
- ⁴ State ex rel. Majerus v. Carter, 214 Mont. 272, 693 P.2d 501 (1984); Hanson v. State, 673 P.2d 657 (Wyo. 1983).
- ⁵ Brandmiller v. Arreola, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).
- ⁶ City of Bismarck v. Stuart, 546 N.W.2d 366 (N.D. 1996); State v. Booher, 978 S.W.2d 953 (Tenn. Crim. App. 1997).
- ⁷ Stevens v. State, 319 Ark. 640, 893 S.W.2d 773 (1995).
- ⁸ State v. Mitchell, 115 N.H. 720, 349 A.2d 862 (1975).
- ⁹ Coyle v. State, 775 S.W.2d 843 (Tex. App. Dallas 1989).
- ¹⁰ Quaring v. Peterson, 728 F.2d 1121 (8th Cir. 1984), judgment aff'd, 472 U.S. 478, 105 S. Ct. 3492, 86 L. Ed. 2d 383 (1985) (allowing an applicant with such beliefs to have a license without a photo does not violate the Establishment Clause).

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

1. In General

§ 103. Application for, and issuance or refusal of, license

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [130](#), [136](#), [139](#)

In order to procure a driver's license, a person needs to meet statutory requirements, such as filing an application with designated officials and paying a specified fee.¹ Under some statutes, the application needs to be verified.² An applicant is required to establish his or her qualifications for the driver's license, such as showing general fitness and driving ability.³ In addition, a state may require the submission of a fingerprint as part of the license application process without violating substantive due process, because such a requirement bears a reasonable and rational relationship to the goal of promoting the safe and lawful use of the state's highways by deterring dangerous drivers whose licenses have been revoked from obtaining new licenses using false identification, and this is a proper legislative objective to which the fingerprint requirement is reasonably related.⁴

The issuance of a driver's license is considered an administrative function,⁵ and a qualified person may not be deprived the privilege of obtaining a license by the arbitrary action of administrative officials.⁶

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Footnotes

¹ [State ex rel. Wright v. Headrick](#), 65 Idaho 148, 139 P.2d 761 (1943).

² [People v. Barrowclough](#), 39 Cal. App. 3d 50, 113 Cal. Rptr. 852 (2d Dist. 1974).

³ §§ [113](#) to [116](#).

⁴ [Perkey v. Department of Motor Vehicles](#), 42 Cal. 3d 185, 228 Cal. Rptr. 169, 721 P.2d 50 (1986).

⁵ Thompson v. Smith, 155 Va. 367, 154 S.E. 579, 71 A.L.R. 604 (1930).

⁶ Com. v. Irwin, 345 Pa. 504, 29 A.2d 68 (1942).

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

1. In General

§ 104. Application for, and issuance or refusal of, license—Gender identification on license

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [130](#), [136](#), [139](#)

The absence of any procedure allowing licensees to change the sex designation on their driver's license impermissibly interferes with a transgendered person's right to privacy and a transgendered person's expectation that the routine disclosure of his or her driver's license will not expose the driver's transgendered status at least implicates the nonfundamental aspects of the right to privacy, and a state's absence of any procedure for changing the sex designation on an individual's license indirectly threatens the disclosure of this sensitive personal information.¹ Similarly, a state's policy for changing the sex on a driver's license or state identification card (ID), which required transgender individuals to procure an amended birth certificate to obtain a new license or ID, implicated liberty interests of transgender individuals by endangering their personal security and bodily integrity, as required to state a claim that the policy violated the transgender individuals' right to privacy under the Due Process Clause of the Fourteenth Amendment as the policy required individuals to carry ID with sex that conflicted with their lived sex, forcing them to reveal their transgender status to complete strangers, and the disclosure of highly personal and intimate information was both embarrassing and placed the individuals at great risk of bodily harm.²

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Footnotes

¹ [K.L. v. State, Dept. of Admin., Div. of Motor Vehicles, 2012 WL 2685183 \(Alaska Super. Ct. 2012\).](#)

² [Love v. Johnson, 146 F. Supp. 3d 848 \(E.D. Mich. 2015\).](#)

Works.

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

1. In General

§ 105. Nature of license; license as privilege

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [130](#), [136](#), [137](#)

Although there is also authority to the contrary, most courts view the procurement of a driver's license not as a right, but as a privilege.¹ In such jurisdictions, a license may be taken away or encumbered as a means of meeting a legitimate legislative goal,² or when the interest of public safety or welfare is at stake.³

On the other hand, a license cannot be taken away without due process of law, whether it is viewed as a right⁴ or a privilege.⁵

In some jurisdictions, a driver's license number, as well as the number written on the front of an identification card issued for nondrivers, is considered exclusively associated with the individual to whom it was issued to and does not cease to be valid simply because the card itself has expired or is suspended; once the number is assigned by the Bureau of Motor Vehicles (BMV) to an individual, the number becomes associated with that person and remains valid for purposes of identification.⁶

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¹ State v. Cifelli, 214 Ariz. 524, 155 P.3d 363 (Ct. App. Div. 1 2007); Tolces v. Trask, 76 Cal. App. 4th 285, 90 Cal. Rptr. 2d 294 (4th Dist. 1999); Colorado Dept. of Revenue v. Garner, 66 P.3d 106 (Colo. 2003); Lite v. State, 617 So. 2d 1058 (Fla. 1993); State v. Vogel, 548 N.W.2d 584 (Iowa 1996); State v. Becker, 36 Kan. App. 2d 828, 145 P.3d 938 (2006); Pletcher v. Com., 992 S.W.2d 852 (Ky. Ct. App. 1998); State v. Jackson, 764 So. 2d 64 (La. 2000); Carrier v. Secretary of State, 2012 ME 142, 60 A.3d 1241 (Me. 2012); Luk v. Com., 421 Mass. 415, 658 N.E.2d 664 (1995); State v. Fish, 280 Minn. 163, 159 N.W.2d 786 (1968); State v. Jackson, 2015 MT 87N, 378 Mont. 542, 348 P.3d 673 (2015); State v. Hansen, 249 Neb. 177, 542 N.W.2d 424 (1996); Zamarripa v. First Judicial Dist. Court, 103 Nev. 638, 747 P.2d 1386 (1987); State v. Oliver, 343 N.C. 202, 470 S.E.2d 16 (1996); State v. Ertelt, 548 N.W.2d 775

(N.D. 1996); *State v. Uskert*, 85 Ohio St. 3d 593, 1999-Ohio-289, 709 N.E.2d 1200 (1999); *Sprecher v. Com., Dept. of Transp., Bureau of Driver Licensing*, 100 A.3d 768 (Pa. Commw. Ct. 2014); *Chisolm v. South Carolina Dept. of Motor Vehicles*, 402 S.C. 593, 741 S.E.2d 42 (Ct. App. 2013); *Phillips v. Texas Dept. of Public Safety*, 362 S.W.3d 252 (Tex. App. Beaumont 2012); *State v. Smet*, 2005 WI App 263, 288 Wis. 2d 525, 709 N.W.2d 474 (Ct. App. 2005).

² *Lite v. State*, 617 So. 2d 1058 (Fla. 1993).

³ *Maumee v. Anistik*, 69 Ohio St. 3d 339, 1994-Ohio-157, 632 N.E.2d 497 (1994).
As to the suspension and revocation of a driver's license, generally, see §§ 117 to 119.

⁴ *Elizondo v. State, Dept. of Revenue, Motor Vehicle Division*, 194 Colo. 113, 570 P.2d 518 (1977).

⁵ *Miller v. Arkansas Dept. of Finance and Admin.*, 2012 Ark. 165, 401 S.W.3d 466 (2012); *Pringle v. Wolfe*, 88 N.Y.2d 426, 646 N.Y.S.2d 82, 668 N.E.2d 1376 (1996); *North Dakota Dept. of Transp. v. DuPaul*, 487 N.W.2d 593 (N.D. 1992); *Plowman v. Com., Dept. of Transp., Bureau of Driver Licensing*, 535 Pa. 314, 635 A.2d 124 (1993).
A driver's license is a special privilege which carries with it certain due process rights; the licensee has no absolute right of ownership in a motor vehicle operator's license, and the driver's right to use the license is specifically conditioned on observing specified operating standards. *State v. Savard*, 659 A.2d 1265 (Me. 1995).

⁶ *In re Resnover*, 979 N.E.2d 668 (Ind. Ct. App. 2012).

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7A Am. Jur. 2d Automobiles § 106

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III. Licensing, Taxation, and Registration


B. Drivers or Operators

1. In General

§ 106. Carrying and display of license

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  135, 136

A.L.R. Library

[Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license or the vehicle registration certificate, 6 A.L.R.3d 506](#)

Statutory provisions may require drivers to have their driver's license in their possession at all times when operating a motor vehicle and to display such license upon demand of a police officer or other person authorized to make such demand,¹ and criminal liability is specifically imposed in some states for noncompliance with such provisions.² Such statutes have been held to constitute a valid exercise of the police power of the state, as such legislation inures to the general safety and welfare of the public.³

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Footnotes

¹ [City of Miami v. Aronovitz](#), 114 So. 2d 784 (Fla. 1959); [State v. Farren](#), 140 Ohio St. 473, 24 Ohio Op. 493, 45 N.E.2d 413, 143 A.L.R. 1016 (1942); [Cox v. State](#), 181 Tenn. 344, 181 S.W.2d 338, 154 A.L.R. 809 (1944).

² [§ 261](#).

³ Morgan v. Town of Heidelberg, 246 Miss. 481, 150 So. 2d 512 (1963); State v. Campbell, 95 R.I. 370, 187 A.2d 543, 6 A.L.R.3d 499 (1963).

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III. Licensing, Taxation, and Registration


B. Drivers or Operators

1. In General

§ 107. Carrying and display of license—Lawfulness of police demand for driver's license

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  135, 136

A.L.R. Library

[Search and seizure: lawfulness of demand for driver's license, vehicle registration, or proof of insurance pursuant to police stop to assist motorist, 19 A.L.R.5th 884](#)

A police officer's action in stopping an automobile and detaining the driver to check the driver's license and the registration of the automobile constitutes an unreasonable seizure under the Fourth and 14th Amendments, except in those situations in which there is at least an articulable and reasonable suspicion that a motorist is unlicensed, that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law.¹ This rule against random stops and detentions, however, does not preclude a state from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion, such as, for example, the questioning of all oncoming traffic at roadblock-type stops.² Such a practice does not constitute an unlawful arrest or restraint or an illegal search contrary to the United States Constitution.³ However, some courts have held that the right to demand and inspect a driver's license is not an arbitrary right and requires some initial cause.⁴

Although there is authority to the contrary,⁵ it has been held that a police officer who stops to assist a vehicle that is at a rest stop or apparently disabled and on the roadside may lawfully demand to see a driver's license.⁶

CUMULATIVE SUPPLEMENT

Cases:

It is the information possessed by the officer at the time the officer stops a vehicle after learning that the registered owner has a revoked driver's license, not any information offered by the individual driver after the fact, that can negate the officer's inference that the owner is the driver of the vehicle, and thus preclude the existence of the reasonable suspicion of criminal activity required to justify the stop. [U.S. Const. Amend. 4](#). [Kansas v. Glover](#), 140 S. Ct. 1183 (2020).

Police had probable cause to believe that motorist, who was sitting in driver's seat of vehicle with engine running, was driving without a license, justifying arrest of motorist, who had initially been stopped for operating a vehicle without a license; police had reason to believe from prior encounter earlier that year that motorist might not have had a license, which motorist confirmed to be a fact, and when officer asked motorist what he was doing driving the vehicle because he did not have a license, motorist responded with, "I know," even though he indicated that he was "just chilling." [U.S. Const. Amend. 4](#); [Md. Code Ann., Transp. § 26-202\(a\)](#). [Spell v. State](#), 239 Md. App. 495, 197 A.3d 562 (2018).

[END OF SUPPLEMENT]

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¹ [Delaware v. Prouse](#), 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).

² [Delaware v. Prouse](#), 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).

³ [State v. Fish](#), 280 Minn. 163, 159 N.W.2d 786 (1968).

If stopping motorists indiscriminately by police officers for the good-faith purpose of inspecting or asking for the exhibition of a driver's license were not permitted, the licensing law would break down and become a nullity, and the objective of promoting public safety from irresponsible automobile drivers would be seriously impeded; there would be but few occasions where an officer could otherwise learn that the law was being violated. [Com. v. Mitchell](#), 355 S.W.2d 686 (Ky. 1962).

As to what constitutes arrest, see [Am. Jur. 2d, Arrest § 4](#).

As to search of motor vehicles, generally, see [Am. Jur. 2d, Searches and Seizures §§ 60 to 62](#).

⁴ [People v. McPherson](#), 191 Colo. 81, 550 P.2d 311 (1976); [People v. James](#), 44 Ill. App. 3d 300, 3 Ill. Dec. 88, 358 N.E.2d 88 (2d Dist. 1976).

⁵ [State v. DeArman](#), 54 Wash. App. 621, 774 P.2d 1247 (Div. 1 1989).

⁶ [O'Donnell v. State](#), 200 Ga. App. 829, 409 S.E.2d 579 (1991); [Com. v. Evans](#), 436 Mass. 369, 764 N.E.2d 841 (2002); [Coffia v. State](#), 2008 OK CR 24, 191 P.3d 594 (Okla. Crim. App. 2008); [State v. Ellenbecker](#), 159 Wis. 2d 91, 464 N.W.2d 427 (Ct. App. 1990).

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

1. In General

§ 108. Judicial review of refusal to issue or renew license

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [136](#), [138](#), [139](#)

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[Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452](#)

In most jurisdictions, provision is made for judicial review of the determination of administrative officers to refuse to issue¹ or renew² a driver's license after a proper application. However, in the absence of a statute providing otherwise, there is no right to a hearing with respect to the refusal of the authorities to renew a driver's license.³

The only issue presented to the court making such a review is whether or not the action of the administrative body in refusing to issue or renew the driver's license is reasonably supported by substantial evidence.⁴ In other words, unless the refusal of the administrative officials is shown to be unlawful, unreasonable, arbitrary, or capricious, the administrative determination is deemed conclusive.⁵

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¹ [Com. v. Irwin, 345 Pa. 504, 29 A.2d 68 \(1942\); Department of Public Safety v. Robertson, 203 S.W.2d 950 \(Tex. Civ. App. Eastland 1947\).](#)

- ² Nelson v. Kelly, 4 A.D.2d 596, 168 N.Y.S.2d 74 (1st Dep't 1957); Beylund v. Levi, 2015 ND 18, 859 N.W.2d 403 (N.D. 2015).
- ³ Nelson v. Kelly, 4 A.D.2d 596, 168 N.Y.S.2d 74 (1st Dep't 1957); Craft v. Texas Dept. of Public Safety, 306 S.W.2d 739 (Tex. Civ. App. Amarillo 1957).
- ⁴ Garrison v. Smith, 306 S.W.2d 244 (Tex. Civ. App. Fort Worth 1957).
- ⁵ Department of Public Safety v. Robertson, 203 S.W.2d 950 (Tex. Civ. App. Eastland 1947).

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

2. Persons Subject to License Laws

§ 109. Persons subject to license requirement, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  129 to 131

Forms

Forms regarding licenses, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic
[\[Westlaw®\(r\) Search Query\]](#)

A driver's license usually is a prerequisite to the privilege of driving a motor vehicle on the highways,¹ and no person except those individuals who are specifically exempted by law may drive or operate any motor vehicle on the highways of the state without a proper license to do so.²

A statute permitting unlicensed operators of trail bikes to pass "across" public highways does not apply to a motorist who operates an off-highway recreational vehicle along the side of the road.³

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Footnotes

¹ [§ 100.](#)

² [Taylor v. State, 151 Tex. Crim. 568, 209 S.W.2d 191 \(1948\).](#)

³

[State v. Hart, 130 N.H. 325, 540 A.2d 859 \(1988\).](#)

As to registration and licensing requirements for motorcycles and dirt bikes, generally, see [§ 89](#).

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

2. Persons Subject to License Laws

§ 110. Public officers and employees

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West's Key Number Digest

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Unless expressly exempted, public officers and employees in the operation of public or private vehicles in the performance of governmental services are required to have drivers' licenses.¹ The fundamental purpose of drivers' license acts requires the inclusion of public officers and employees as well as other persons, since there is just as much danger to the public in the operation of vehicles engaged in governmental services as in the operation of vehicles engaged in private ventures.² However, the state may not require qualifications in addition to those which the federal government has pronounced sufficient—for example, by requiring a post-office employee to cease driving a government truck in the transportation of mail over a post road until he or she obtains a license by submitting to examination before a state official and paying a fee.³

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Footnotes

- ¹ [Croson v. District of Columbia](#), 2 F.2d 924 (App. D.C. 1924); [Department of Penal Institutions v. Wymore](#), 350 Mo. 127, 165 S.W.2d 618 (1942).
As to federal statute concerning state and local licenses for operators of federal vehicles, see [§ 113](#).
- ² [Department of Penal Institutions v. Wymore](#), 350 Mo. 127, 165 S.W.2d 618 (1942).
- ³ [Johnson v. State of Maryland](#), 254 U.S. 51, 41 S. Ct. 16, 65 L. Ed. 126 (1920).

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Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

2. Persons Subject to License Laws

§ 111. Chauffeurs

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Chauffeurs generally are required to obtain special licenses in order to operate motor vehicles, such licenses being commonly referred to as “chauffeur licenses.”¹

Unreasonable and arbitrary restrictions cannot be placed upon the right to obtain a public chauffeur's license,² but the fact that driving is necessary to a driver's employment does not render a state's automatic revocation system violative of due process for providing a hearing only after the revocation has taken effect.³

Definition:

The term “chauffeur” has both a restricted and a general meaning, and in the former sense it applies to persons driving motor vehicles principally for salary or compensation.⁴ It is this restricted meaning that generally has been adopted by the statutes in defining the term “chauffeur.”⁵ As so defined, an employee who receives compensation principally for services other than the operation of motor vehicles is not required to obtain a chauffeur's license, although in performing such services the employee may incidentally operate a motor vehicle.⁶ Even under a statute that defines the term “chauffeur” to include every person operating a motor vehicle for hire or as an employee of the owner of the vehicle, it has been held that one who is not employed primarily as the driver of a motor vehicle, but merely operates a motor vehicle of the employer incidentally to the purposes of the employment, is not required to obtain a chauffeur's license.⁷

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- ¹ [Des Moines Rug Cleaning Co. v. Automobile Underwriters, 215 Iowa 246, 245 N.W. 215 \(1932\).](#)
- ² [Miller v. Carter, 547 F.2d 1314 \(7th Cir. 1977\), judgment aff'd, 434 U.S. 356, 98 S. Ct. 786, 54 L. Ed. 2d 603 \(1978\)](#) (a city ordinance that permanently bars a person convicted of certain felonies from obtaining a public chauffeur's license violates the Equal Protection Clause, as existing licensees do not automatically lose their licenses if convicted of a felony, which undercuts the reasonableness of the contention that a felon is per se likely to create a serious risk that cannot be sufficiently evaluated to protect the public through individualized hearings).
- ³ [Burgess v. Ryan, 996 F.2d 180 \(7th Cir. 1993\).](#)
As to prehearing revocations, generally, see §§ 147 to 151.
- ⁴ [Amalgamated Ass'n of St. and Elec. Ry. and Motor Coach Emp. of America v. Morley, 219 Ark. 53, 239 S.W.2d 745 \(1951\); State v. Depew, 175 Md. 274, 1 A.2d 626 \(1938\).](#)
- ⁵ [Des Moines Rug Cleaning Co. v. Automobile Underwriters, 215 Iowa 246, 245 N.W. 215 \(1932\).](#)
- ⁶ [Des Moines Rug Cleaning Co. v. Automobile Underwriters, 215 Iowa 246, 245 N.W. 215 \(1932\); Matthews v. State, 85 Tex. Crim. 469, 214 S.W. 339 \(1919\).](#)
- ⁷ [State v. Depew, 175 Md. 274, 1 A.2d 626 \(1938\).](#)

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III. Licensing, Taxation, and Registration


B. Drivers or Operators

2. Persons Subject to License Laws

§ 112. Nonresidents

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West's Key Number Digest

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The state, under the police power, has the right to require licenses from nonresidents for the operation of motor vehicles on its highways,¹ including nonresidents operating motor vehicles engaged in interstate or foreign commerce.²

In some jurisdictions, statutes have been enacted that exempt nonresidents from driver's license requirements, provided they are residents of states that require drivers' licenses and they have complied with that requirement.³ Such a statute does not deprive residents of states whose laws do not require drivers' licenses of the equal protection of the laws.⁴ In other jurisdictions, nonresidents are exempted from driver's license requirements on a reciprocal basis: where they have complied with the license laws of their place of residence and the laws of their place of residence accord a like or reciprocal exemption to residents of such jurisdictions.⁵ If one's driver's license has been suspended or revoked in one state, that person cannot claim that a license granted to him or her in another state permits him or her to drive in the former state.⁶

Observation:

A domiciliary of another state, while residing in Virginia, can use his or her commercial driver's license, issued by the other state, to drive noncommercial vehicles in Virginia.⁷

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Footnotes

- ¹ Kane v. New Jersey, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916); Hendrick v. State of Maryland, 235 U.S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1915).
- ² Kane v. New Jersey, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916); Hendrick v. State of Maryland, 235 U.S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1915).
As to government regulation of interstate motor carriers, see Am. Jur. 2d, Carriers §§ 26 to 40.
- ³ State v. Chandler, 131 Me. 262, 161 A. 148, 82 A.L.R. 1389 (1932).
- ⁴ State v. Chandler, 131 Me. 262, 161 A. 148, 82 A.L.R. 1389 (1932).
- ⁵ Plunkett v. Heath, 1 N.Y.S.2d 778 (N.Y. City Ct. 1938).
- ⁶ State v. Dalton, 13 Wash. App. 94, 533 P.2d 864 (Div. 3 1975).
- ⁷ Meierotto v. Com., 50 Va. App. 1, 646 S.E.2d 1 (2007).

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III. Licensing, Taxation, and Registration


B. Drivers or Operators

3. Qualifications for License

§ 113. Qualifications for license; generally

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West's Key Number Digest, [Automobiles](#)  136, 138

A.L.R. Library

[Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452](#)

It is within the police power of the state to make provisions designed to limit the operation of motor vehicles to those who are competent to do so.¹ Regulations in the various states prescribe, either directly or indirectly, the qualifications for a driver's license, and these generally require that an applicant therefor be of a certain age,² that he or she demonstrate an ability to drive by passing an examination or driver's test,³ and that he or she not have a currently suspended or revoked license in that state or any other state.⁴ Pursuant to some regulations, an applicant for a driver's license must also furnish proof of fitness, including a showing that he or she is free from physical defects or mental disabilities or conditions that incapacitate him or her to operate a motor vehicle.⁵ Under such a statute, it has been held that in determining the fitness of an applicant for a driver's license, the authorities are not restricted to a determination of the applicant's ability to operate a motor vehicle, but may consider the applicant's previous criminal activities, such as convictions for bookmaking, reckless driving, and speeding, and revocations of his or her license.⁶ Many states also require applicants to prove that they are insured or have made other arrangements to pay for any damages they may cause while driving.⁷

The Director of the Office of Personnel Management is charged with prescribing regulations to govern executive agencies in authorizing civilian personnel to operate government-owned motor vehicles for official purposes, with such regulations prescribing standards of physical fitness for authorized operators; such regulations may also require operators and

prospective operators to obtain such state and local licenses or permits as would be required for the operation by them of similar vehicles for other than official purposes.⁸

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Footnotes

¹ [Lowe v. Simmons](#), 185 Miss. 88, 187 So. 214 (1939).

² [§ 114](#).

³ [§ 116](#).

⁴ [Wilczewski v. Neth](#), 273 Neb. 324, 729 N.W.2d 678 (2007).

⁵ [Com. v. Irwin](#), 345 Pa. 504, 29 A.2d 68 (1942); [State v. Campbell](#), 99 R.I. 57, 205 A.2d 576 (1964).

⁶ [Bernola v. Fletcher](#), 280 A.D. 870, 114 N.Y.S.2d 152 (2d Dep't 1952).

⁷ [§§ 168 to 171](#).

⁸ [40 U.S.C.A. § 606](#).

As to federal regulations affecting government motor vehicle operators, see [5 C.F.R. §§ 930.101 to 930.115](#).

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III. Licensing, Taxation, and Registration

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3. Qualifications for License

§ 114. Age requirements

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West's Key Number Digest

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A.L.R. Library

[Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 A.L.R.3d 475](#)

Statutes providing for the issuance of drivers' licenses, either directly or by clear implication, may prohibit the issuance of drivers' licenses to persons under the prescribed age.¹ Such statutes generally have been held valid as against the contention that they violate due process² or the Equal Protection Clause of the Constitution.³ The state may, as an exercise of the police power, deny drivers' licenses to those under 16 years of age.⁴

One of the objects of such statutes is to protect users of the highways from inexperienced and immature drivers; the statutes in effect declare that persons under the ages specified do not possess the requisite care and judgment to operate motor vehicles on the public highways without endangering others.⁵

Some states have enacted statutes that require an applicant for a minor's driver's license to have a sponsor, that limit sponsors to persons who are likely to be able to exercise some control over the minor's driving, and that impose financial responsibility on the sponsor for damages caused by the minor's operation of a motor vehicle.⁶ Such statutes are intended to afford other users of the road some protection from minor drivers.⁷

Footnotes

- ¹ Wagoner v. Fidelity & Casualty Co. of New York, 215 A.D. 170, 213 N.Y.S. 188 (3d Dep't 1926), *aff'd*, 253 N.Y. 608, 171 N.E. 803 (1930).
- ² State v. Graunke, 119 Neb. 440, 229 N.W. 329 (1930).
- ³ Berberian v. Petit, 118 R.I. 448, 374 A.2d 791, 86 A.L.R.3d 468 (1977).
- ⁴ State v. Graunke, 119 Neb. 440, 229 N.W. 329 (1930).
- ⁵ Sedlacek v. Ahrens, 165 Mont. 479, 530 P.2d 424 (1974); Charbonneau v. MacRury, 84 N.H. 501, 153 A. 457, 73 A.L.R. 1266 (1931).
- ⁶ Ynocencio v. Fesko, 114 Wis. 2d 391, 338 N.W.2d 461 (1983).
- ⁷ Ynocencio v. Fesko, 114 Wis. 2d 391, 338 N.W.2d 461 (1983).

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III. Licensing, Taxation, and Registration

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§ 115. Identification requirements affecting illegal aliens

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, [Automobiles](#)  [129](#), [131](#), [132](#), [138](#)

A.L.R. Library

[Validity of State Statutes, Regulations, or other Identification Requirements Restricting or Denying Driver's Licenses to Illegal Aliens](#), 16 A.L.R.6th 131

A state statute restricting or denying driver's licenses to illegal aliens has been held neither to create an unconstitutional classification under the Equal Protection Clause based on alienage or national origin,¹ nor to violate one's right to travel.² A statutory scheme requiring the production of a social security number or documentation authorizing a foreign national's presence in the country is rationally related to the legitimate state interest of not allowing its governmental machinery to be a facilitator for the concealment of illegal aliens.³ On the other hand, a state's policy of denying driver's licenses to undocumented aliens who qualified for deferred removal under the Federal Deferred Action for Childhood Arrivals (DACA) program was held not to be rationally related to any legitimate state purpose, and the policy violated the DACA recipients' equal protection rights and the justifications for the policy asserted by the state were unfounded or speculative, or the policy did not further the state's asserted justifications.⁴

Observation:

In July 2006, a federal statute became effective which, according to at least one court,⁵ shows the implicit federal recognition that

states can legally issue drivers' licenses without a person being in a position to establish his or legal presence in the United States.⁶

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- ¹ John Doe No. 1 v. Georgia Dept. of Public Safety, 147 F. Supp. 2d 1369 (N.D. Ga. 2001) (applying Georgia law); League of United Latin American Citizens (LULAC) v. Bredeisen, 2004 WL 3048724 (M.D. Tenn. 2004); Sanchez v. State, 692 N.W.2d 812, 16 A.L.R.6th 825 (Iowa 2005).
- ² John Doe No. 1 v. Georgia Dept. of Public Safety, 147 F. Supp. 2d 1369 (N.D. Ga. 2001).
- ³ Sanchez v. State, 692 N.W.2d 812, 16 A.L.R.6th 825 (Iowa 2005).
- ⁴ Arizona Dream Act Coalition v. Brewer, 81 F. Supp. 3d 795 (D. Ariz. 2015), *aff'd*, 2017 WL 461503 (9th Cir. 2017).
- ⁵ State v. Lopez, 948 So. 2d 1121 (La. Ct. App. 4th Cir. 2006), writ denied, 969 So. 2d 619 (La. 2007).
- ⁶ 8 U.S.C.A. §§ 1101 to 1107 ("Real ID Act of 2005").

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III. Licensing, Taxation, and Registration

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§ 116. Driving examination or reexamination

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [132](#), [138](#), [139](#)

Drivers' licenses applicants generally are required to pass an examination demonstrating their ability to operate a motor vehicle.¹ Such an examination need not be taken in a motor vehicle owned by the applicant, but may be taken in a motor vehicle owned and furnished by another for that purpose, including a motor vehicle owned by a driving school.²

In some jurisdictions, drivers involved in accidents or in certain traffic offenses may be required to be reexamined as to their ability to operate a motor vehicle.³ The right to require a licensee to submit to reexamination and to cancel his or her license if he or she fails to do so depends upon the existence of statutory authority to take such action.⁴ It exists only where the agency imposing the requirement has reasonable grounds for the belief that the operator is unqualified to drive.⁵

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Footnotes

¹ [Leder v. Harnett](#), 252 N.Y. 619, 170 N.E. 166 (1930).

² [Leder v. Harnett](#), 252 N.Y. 619, 170 N.E. 166 (1930).

³ [Carnegie v. Department of Public Safety](#), 60 So. 2d 728 (Fla. 1952); [Wignall v. Fletcher](#), 303 N.Y. 435, 103 N.E.2d 728 (1952).

⁴ [Carnegie v. Department of Public Safety](#), 60 So. 2d 728 (Fla. 1952).

⁵ [Berger v. Melton](#), 100 Misc. 2d 262, 418 N.Y.S.2d 880 (Sup 1979).

Given that an 87-year-old driver had numerous health problems and was on many medications, the Department of Motor Vehicles (DMV) had reason to believe that the driver was not qualified to drive a motor vehicle, justifying the DMV's request that the driver take a road test. [Femia v. Administrative Appeals Bd. of New York State Dept. of Motor Vehicles](#), 42 A.D.3d 951, 839 N.Y.S.2d 396 (4th Dep't 2007).

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses

a. Suspension and Revocation, in General

§ 117. Suspension and revocation of licenses; generally

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  132, 144.1(1)

Statutes and ordinances regulating the granting of drivers' licenses in particular jurisdictions may contain provisions for their suspension or revocation under stated circumstances.¹ The suspension or revocation of a driver's license is generally considered a civil matter² and not intended as a punishment to the driver,³ but is designed solely for the protection of the public in the use of the highways,⁴ and is one of the most effective measures to compel observance of the traffic laws.⁵

Observation:

A state agency cannot suspend the driver's license of a nonresident; rather, it is limited to revoking or suspending the nonresident's privilege of driving a motor vehicle on the highways of the state.⁶

Once issued, a driver's license becomes a property interest that may not be suspended or revoked without the procedural due process guaranteed by the 14th Amendment.⁷ Statutes and regulations governing the cancellation of driving privileges based on a motorist's failure to pass driver's tests are not unconstitutionally vague, in violation of the constitutional rights of equal privileges and immunities and against ex post facto laws, where they enumerate the qualifications for eligibility and specify what will render the motorist ineligible for driver's privileges.⁸ Drivers' licenses may not, however, be suspended or revoked

arbitrarily or capriciously, but only in the manner and on the grounds provided by law.⁹

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- ¹ [Maumee v. Anistik](#), 69 Ohio St. 3d 339, 1994-Ohio-157, 632 N.E.2d 497 (1994); [Price v. Reed](#), 1986 OK 43, 725 P.2d 1254 (Okla. 1986).
As to specific grounds for suspension or revocation, see §§ 120 to 146.
- ² [Brown v. New York State Dept. of Motor Vehicles](#), 44 Misc. 3d 182, 988 N.Y.S.2d 428 (Sup 2014); [State v. Brown](#), 2017-Ohio-678, 2017 WL 751290 (Ohio Ct. App. 3d Dist. Marion County 2017).
- ³ [Bartholomew v. Director of Revenue](#), 462 S.W.3d 465 (Mo. Ct. App. E.D. 2015).
- ⁴ [Burke v. Board of Appeal on Motor Vehicle Liability Policies and Bonds](#), 90 Mass. App. Ct. 203, 58 N.E.3d 351 (2016), review denied, 476 Mass. 1101, 63 N.E.3d 386 (2016); [Prillaman v. Com.](#), 199 Va. 401, 100 S.E.2d 4 (1957).
- ⁵ [City of Miami v. Aronovitz](#), 114 So. 2d 784 (Fla. 1959).
- ⁶ [McHugh v. State](#), 285 Ga. App. 131, 645 S.E.2d 619 (2007).
- ⁷ [State v. Pyette](#), 2007 MT 119, 337 Mont. 265, 159 P.3d 232 (2007); [Phillips v. Com., Dept. of Transp., Bureau of Driver Licensing](#), 80 A.3d 561 (Pa. Commw. Ct. 2013).
As to the need for pretermination notice and hearing, generally, see §§ 148 to 151.
- ⁸ [Richardson v. Driver and Motor Vehicle Services Div. \(DMV\)](#), 213 Or. App. 18, 159 P.3d 1227 (2007).
As to driving examinations, generally, see § 116.
- ⁹ [Carnegie v. Department of Public Safety](#), 60 So. 2d 728 (Fla. 1952); [Application of Wignall](#), 278 A.D. 28, 103 N.Y.S.2d 7 (4th Dep't 1951), order aff'd, 303 N.Y. 435, 103 N.E.2d 728 (1952); [Filkowski v. Director, North Dakota Dept. of Transp.](#), 2015 ND 104, 862 N.W.2d 785 (N.D. 2015); [Barden v. Com.](#), 64 Va. App. 700, 771 S.E.2d 699 (2015).

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses

a. Suspension and Revocation, in General

§ 118. Who may suspend or revoke licenses

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(1), 144.2(.5)

Where a driver's license is generally considered a privilege and not a property or contract right,¹ there is no denial of due process of law resulting from placing the power to suspend or revoke in an administrative officer.² The licensee's right of review, as provided by law, is sufficient protection that suspension or revocation powers will be reasonably and fairly administered.³ However, legislative authority to suspend or revoke a driver's license may not be delegated to administrative officials without some definite and fixed standard as to what shall constitute grounds for the suspension or revocation.⁴

Caution:

A statute authorizing the director of a state's motor vehicle department to suspend or revoke a driver's license "for any cause which he may deem sufficient" is an unconstitutional delegation of legislative authority in some states, as it fails to declare a general policy and prescribe standards for the director to utilize in deciding whether to suspend or revoke a license.⁵

¹ § 105.

² Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620, 35 A.L.R.2d 1003 (1952) (overruled in part on other grounds by, Stauffer v. Weedlun, 188 Neb. 105, 195 N.W.2d 218 (1972)); Johnson v. Sanchez, 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449 (1960).

³ Anderson v. Commissioner of Highways, 267 Minn. 308, 126 N.W.2d 778, 9 A.L.R.3d 746 (1964); Johnson v. Sanchez, 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449 (1960).

⁴ Johnson v. Sanchez, 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449 (1960).

⁵ Guillou v. State, Div. of Motor Vehicles, 127 N.H. 579, 503 A.2d 838 (1986).

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4. Suspension, Revocation, and Reinstatement of Licenses

a. Suspension and Revocation, in General

§ 119. Who may suspend or revoke licenses—Power of municipality to suspend or revoke

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West's Key Number Digest, [Automobiles](#)  144.1(1), 144.2(.5)

In the absence of a state statute expressly or impliedly authorizing municipal revocation of state-issued driver's licenses, a municipal ordinance providing for such revocation is invalid.¹ A statute authorizing municipalities to enact traffic regulations does not impliedly authorize the municipalities to enact ordinances providing for the suspension or revocation of state-issued drivers' licenses.² A statute that specifically empowers municipal courts to suspend driver's licenses for nonpayment of nontraffic fines is constitutional where the coercive effect of the threat of suspension is a valid exercise of the police power to promote the general welfare through a range of enforcement devices.³

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Footnotes

¹ [Poynter v. Walling](#), 54 Del. 409, 177 A.2d 641 (Super. Ct. 1962); [Briggs v. City of Union City](#), 531 S.W.2d 106 (Tenn. 1975); [City of Bellingham v. Schampera](#), 57 Wash. 2d 106, 356 P.2d 292, 92 A.L.R.2d 192 (1960).

² [Poynter v. Walling](#), 54 Del. 409, 177 A.2d 641 (Super. Ct. 1962); [Gembler v. City of Seward](#), 136 Neb. 916, 288 N.W. 545 (1939).

³ [City of Milwaukee v. Kilgore](#), 185 Wis. 2d 499, 517 N.W.2d 689 (Ct. App. 1994), decision *aff'd*, 193 Wis. 2d 168, 532 N.W.2d 690 (1995).

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7A Am. Jur. 2d Automobiles § 120

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Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses

b. Grounds for Suspension or Revocation

(1) In General

§ 120. Grounds for suspension or revocation of license, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(1\)](#) to [144.1\(4\)](#)

Driver's licenses may be made subject to suspension or revocation on any ground that would justify a refusal to issue the license in the first instance,¹ along with any other reasons enumerated in the applicable statutes or regulations.² Some statutes provide very general grounds for the motor vehicle department to apply, such as providing that a driver's license may be revoked whenever the department believes that failure to revoke the license will compromise public safety.³

Caution:

At least one statute has been held unconstitutionally vague because it authorized a state motor vehicle department to suspend a driver's license without a preliminary hearing upon a showing that the driver had been involved as a driver in an accident resulting in the death or personal injury of another. The court stated that the statute failed to set forth a standard to be used when determining if a license should be revoked.⁴

CUMULATIVE SUPPLEMENT

Cases:

California's statutory scheme, establishing public list of top 500 delinquent state taxpayers who owed in excess of \$100,000, and providing for suspension of driver's license of a taxpayer on the delinquent list until full payment of the tax obligation was arranged, did not constitute unconstitutional bill of attainder, with respect to taxpayer whose driver's license was suspended; statutes at issue did not expressly name taxpayer, but rather, were couched in general terms, at time statutes were enacted, there was manifest uncertainty as to who would be affected, because list was fluid and any of the taxpayers on it had power to escape the license revocation by fulfilling their tax obligations, and the conduct defining the individuals or groups on the list did not consist of irrevocable acts committed by them. [U.S. Const. art. 1, § 10, cl. 1](#); [Cal. Bus. & Prof. Code § 494.5](#); [Cal. Rev. & Tax. Code § 19195](#). [Franceschi v. Yee](#), 887 F.3d 927 (9th Cir. 2018).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Barbieri v. Morris](#), 315 S.W.2d 711 (Mo. 1958).
- ² As to the state's power to require motor vehicle drivers' licenses, and to condition those licenses, generally, see §§ [100](#) to [108](#).
- ³ [Luk v. Com.](#), 421 Mass. 415, 658 N.E.2d 664 (1995).
- ⁴ [Fitzpatrick v. Pare](#), 568 A.2d 1012 (R.I. 1990).

7A Am. Jur. 2d Automobiles § 121

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Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses


b. Grounds for Suspension or Revocation

(2) Physical Disability

§ 121. Suspension or revocation of license for physical disability, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(1\)](#)

A.L.R. Library

[Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452](#)

Trial Strategy

[Proof of Physical Disability of Driver of Motor Vehicle, 53 Am. Jur. Proof of Facts 3d 67](#)

A statute may prevent the licensing agency from issuing a license to any person whom the agency has good cause to believe would not be able to operate a motor vehicle with safety upon the highways by reason of physical or mental disability.¹ Some statutory provisions avoid the naming of specific diseases or defects the affliction with which would necessitate automatic disqualification, instead making the determining criterion a broad one of results, such as whether the individual in question

would, in view of his or her physical condition, be unable to operate a motor vehicle safely,² is incompetent,³ or with reasonable and ordinary control.⁴

An administrative deprivation of driving privileges based solely on a suspicion that the motorist is suffering from a disabling infirmity will not be sustained in the absence of substantial evidence, and a revocation based exclusively upon an otherwise-healthy motorist's advanced age,⁵ and a suspension predicated solely upon a police accident report indicating that the motorist in question stated that he or she had suffered a mental lapse,⁶ have not been upheld.

In resolving the critical question of whether an individual's alleged impaired condition does or could adversely affect his or her ability to drive safely, the courts have considered a variety of factors. For example, a court may look at past driving proficiency, so that the fact that a driver has never, or at least only rarely, been involved in a traffic accident has contributed toward the reversal of administrative action in several cases.⁷

Practice Tip:

A verbal representation by a driver of his or her own medical condition is a reliable source for a good cause belief in the need to obtain further information concerning the driver's ability to safely control and operate a vehicle.⁸

Multiple sclerosis may interfere with a driver's ability to control and safely operate a motor vehicle, so a driver's statement that he or she has this condition is reasonable grounds for a motor vehicle department to request a questionnaire from the driver's physician to determine if the condition does interfere with his or her driving ability.⁹ A driver with an unrepaired aneurysm is not qualified to hold a commercial driver's license, despite a doctor's giving the driver medical clearance.¹⁰

Under some statutes, a motor vehicle department may require a driver to submit to a physical examination if the department has good cause to believe that the driver may be physically or mentally incapable of operating a motorized vehicle safely.¹¹ Under such a statute, the motor vehicle department may, in lieu of an examination, solicit the driver's physician's response to a questionnaire.¹²

Under other statutes, the state may require health care professionals to report to the Department of Transportation every patient over age of 15 years old who has conditions, which, in the opinion of the health care professional, are likely to impact their ability to safely operate a motor vehicle.¹³

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Footnotes

¹ Mangan v. Department of Public Safety, 258 Iowa 359, 138 N.W.2d 922 (1965); City of Spokane v. McGoldrick, 21 Wash. App. 255, 584 P.2d 471 (Div. 3 1978).

² Mangan v. Department of Public Safety, 258 Iowa 359, 138 N.W.2d 922 (1965).

³ Turk v. Com., Dept. of Transp., 983 A.2d 805 (Pa. Commw. Ct. 2009).

⁴ Ormond v. Garrett, 8 N.C. App. 662, 175 S.E.2d 371, 38 A.L.R.3d 448 (1970).

⁵ § 124.

⁶ Lashway v. Hulst, 36 Misc. 2d 1012, 234 N.Y.S.2d 47 (Sup 1962).

- ⁷ Ormond v. Garrett, 8 N.C. App. 662, 175 S.E.2d 371, 38 A.L.R.3d 448 (1970) (epilepsy and approximately 225,000 miles without accident).
- ⁸ State, Dept. of Motor Vehicles and Public Safety v. Miles, 111 Nev. 681, 895 P.2d 1316 (1995).
- ⁹ State, Dept. of Motor Vehicles and Public Safety v. Miles, 111 Nev. 681, 895 P.2d 1316 (1995).
- ¹⁰ Commissioner, Dept. of Revenue v. Fort, 760 N.E.2d 1103 (Ind. Ct. App. 2001).
- ¹¹ State, Dept. of Motor Vehicles and Public Safety v. Miles, 111 Nev. 681, 895 P.2d 1316 (1995).
- ¹² State, Dept. of Motor Vehicles and Public Safety v. Miles, 111 Nev. 681, 895 P.2d 1316 (1995).
- ¹³ Behar v. Pennsylvania Dept. of Transp., 791 F. Supp. 2d 383 (M.D. Pa. 2011).

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7A Am. Jur. 2d Automobiles § 122

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses


b. Grounds for Suspension or Revocation

(2) Physical Disability

§ 122. Visual impairment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(1\)](#)

Trial Strategy

[Proof of Physical Disability of Driver of Motor Vehicle](#), 53 Am. Jur. Proof of Facts 3d 67, § 12

A rule prohibiting the issuance of a driver's license to anyone who must wear bioptic telescopic lenses does not violate a statute regarding the right of physically disabled persons to use the public highways, in light of evidence that such lenses are unsafe for operating motor vehicles.¹ Such a rule does not violate equal protection or deny such drivers due process.²

Absent a showing that the visual acuity standards provided in the regulations governing renewal of a driver's license are unreasonable, arbitrary, unnecessary, or invalid, the regulation sets the minimum standard, which cannot be deviated from by application of a broad general concept of safe driving ability as set forth in the authorizing statute or by a showing that the driver could be capable of driving a vehicle safely.³

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Footnotes

¹ Gooch v. Iowa Dept. of Transp., 398 N.W.2d 845 (Iowa 1987).

² Gooch v. Iowa Dept. of Transp., 398 N.W.2d 845 (Iowa 1987).

³ Vandever v. Kansas Dept. of Revenue, 243 Kan. 693, 763 P.2d 317 (1988).

7A Am. Jur. 2d Automobiles § 123

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses


b. Grounds for Suspension or Revocation

(2) Physical Disability

§ 123. Sudden losses of consciousness; epilepsy and diabetes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(1)

A.L.R. Library

[Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452](#)

Trial Strategy

[Proof of Physical Disability of Driver of Motor Vehicle, 53 Am. Jur. Proof of Facts 3d 67](#) §§ 9, 10, 16, 17
[Liability for Sudden Loss of Consciousness While Driving, 17 Am. Jur. Proof of Facts 3d 1](#)

In reviewing discretionary denials of licenses in cases involving conditions characterized by sudden attacks that could result in a loss of consciousness, such as epilepsy, insulin-treated diabetes, and certain neurological disorders, the courts have placed particular emphasis on the driver's medical history, the relative infrequency with which the motorist suffered attacks in the past being a factor contributing toward the reversal of a license suspension in a number of cases.¹ While licensing

authorities may refuse to renew a driver's license where the applicant has a past history of epilepsy, under the statutory power to refuse to renew drivers' licenses where they deem the applicants not qualified to receive such licenses,² the reversal of several administrative license withdrawals has been predicated, at least in part, upon the fact that the motorist's recurring condition was controlled, through proper dosages of an appropriate medication or other methods,³ although that has not been the result where it has been shown that the motorist has failed to take medication on occasions in the past and has suffered at least one apparent attack while driving.⁴ Where an administrative agency is afforded discretion in determining driving qualifications, it may properly refuse to license a person suffering from a recurring condition that is medically controlled and, instead, make the criterion the absence of attacks, without the benefit of medication, for a specified period of time.⁵ However, where a regulation provides for the suspension of a driver's license for a period of one year upon the occurrence of a single epileptic seizure, without giving the licensee an opportunity to present medical evidence in an effort to establish his or her competency to drive, it creates an irrebuttable presumption in violation of due process.⁶

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Footnotes

- ¹ Smith v. Department of Motor Vehicles, 163 Cal. App. 3d 321, 209 Cal. Rptr. 283 (1st Dist. 1984); Higgins v. Department of Public Safety, 138 So. 2d 530 (Fla. 3d DCA 1962); Derouchie v. Kelly, 1 A.D.2d 921, 149 N.Y.S.2d 694 (3d Dep't 1956).
- ² Nelson v. Kelly, 4 A.D.2d 596, 168 N.Y.S.2d 74 (1st Dep't 1957).
- ³ Chesnutt v. Peters, 300 N.C. 359, 266 S.E.2d 623 (1980).
- ⁴ Mangan v. Department of Public Safety, 258 Iowa 359, 138 N.W.2d 922 (1965).
- ⁵ Derouchie v. Kelly, 1 A.D.2d 921, 149 N.Y.S.2d 694 (3d Dep't 1956).
- ⁶ Com. Dept. of Transp., Bureau of Driver Licensing v. Clayton, 546 Pa. 342, 684 A.2d 1060 (1996).

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7A Am. Jur. 2d Automobiles § 124

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses


b. Grounds for Suspension or Revocation

(2) Physical Disability

§ 124. Advanced age

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(1)

An administrative deprivation of driving privileges based solely on a suspicion that the motorist is suffering from a disabling infirmity, based exclusively upon an otherwise-healthy motorist's advanced age, will not be sustained;¹ to deprive a person of a substantive right solely on the basis of age is clearly arbitrary.² A hearing officer's routine observations of a driver's age and hand tremors cannot constitute the requisite reasonable cause to require a vehicle operator to submit to a physical examination or lose his or her license.³

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Footnotes

¹ [Feely v. Hults](#), 27 A.D.2d 953, 279 N.Y.S.2d 249 (2d Dep't 1967).

² [Berger v. Melton](#), 100 Misc. 2d 262, 418 N.Y.S.2d 880 (Sup 1979).

³ [Berger v. Melton](#), 100 Misc. 2d 262, 418 N.Y.S.2d 880 (Sup 1979).

7A Am. Jur. 2d Automobiles § 125

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses

b. Grounds for Suspension or Revocation

(3) Refusal to Submit to Intoxication Test

(a) In General

§ 125. Suspension or revocation of license for refusal to submit to intoxication test, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(1.10\)](#) to [144.1\(1.20\)](#)

A.L.R. Library

[Validity, Construction, and Application of State Statutes Providing for Revocation of Driver's License for Failure to Pay Child Support](#), 30 A.L.R.6th 483

[Mental incapacity as justifying refusal to submit to tests for driving while intoxicated](#), 76 A.L.R.5th 597

There is no constitutional right to drive with alcohol in one's system.¹ Implied consent laws all across the United States provide that a person who operates a motor vehicle in a given state is deemed to have given his or her consent to a chemical test of breath, blood, urine, or saliva, for the purpose of determining the alcoholic content of his or her blood, and that the refusal of a motorist to submit to such a test upon a proper request generally constitutes grounds for the suspension or revocation of his or her driver's license.² Since a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing, a drunk driver has no right to resist or refuse such a test, notwithstanding statutory sanctions for a driver's refusal to submit to chemical tests.³ However, in some instances involving mental incapacity of the driver, refusal to take a chemical test has been deemed justified.⁴ If a motorist is truly incapable of providing a knowing refusal to submit to a

breath or blood test as a result of a medical incapacity due to emotional distress, it is the motorist's burden to document the incapacity with credible medical testimony.⁵

To uphold the revocation of a driver's license for refusal to take a breathalyzer test, a court must determine only that the driver was arrested, that the arresting officer had reasonable grounds to believe the driver was driving while intoxicated, and that the driver refused to submit to the test;⁶ the state has the burden of proof on all these issues,⁷ and failure to prove all three elements will result in the reinstatement of the driver's license.⁸ Moreover, a motorist arrested for driving under the influence may be able to cure a prior refusal to take a blood alcohol test, and thereby avoid revocation of a driver's license for refusal to submit to test, if he or she changes his mind and requests the test.⁹

Observation:

Refusing to submit to chemical testing to determine alcohol consumption is a legislatively granted privilege, and the legislature limits the privilege by attaching consequences to the act of exercising that privilege.¹⁰

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Footnotes

- ¹ [Elias-Cruz v. Idaho Dept. of Transp.](#), 153 Idaho 200, 280 P.3d 703 (2012).
- ² [People v. Thompson](#), 38 Cal. 4th 811, 43 Cal. Rptr. 3d 750, 135 P.3d 3 (2006); [Staggs v. Director of Revenue](#), 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007); [Matter of Suazo](#), 1994-NMSC-070, 117 N.M. 785, 877 P.2d 1088 (1994); [Village of Oregon v. Bryant](#), 188 Wis. 2d 680, 524 N.W.2d 635 (1994); [Escarcega v. State ex rel. Wyo. Dept. of Transp.](#), 2007 WY 38, 153 P.3d 264 (Wyo. 2007).
- ³ [People v. Thompson](#), 38 Cal. 4th 811, 43 Cal. Rptr. 3d 750, 135 P.3d 3 (2006).
- ⁴ [State v. Superior Court of Pima County](#), 155 Ariz. 403, 747 P.2d 564 (Ct. App. Div. 2 1986), decision approved, 155 Ariz. 408, 747 P.2d 569 (1987) (driver's suspended license was reinstated after she presented evidence by her psychiatrist that she was incapable of voluntarily refusing the test); [Matter of Griffiths](#), 113 Idaho 364, 744 P.2d 92 (1987) (driver's fear of needles was sufficient to justify a refusal to take a blood test); [Wessell v. State, Dept. of Justice, Motor Vehicle Div.](#), 277 Mont. 234, 921 P.2d 264 (1996) (a disabling and disclosed fear of needles is the functional equivalent of a physical disability and may excuse refusal of a blood test); [Gordon v. Com., Dept. of Transp., Bureau of Driver Licensing](#), 707 A.2d 1195 (Pa. Commw. Ct. 1998) (driver's refusal to take the test was due to her mental incapacity, not to alcohol).
- ⁵ [Hollis v. State ex rel. Dept. of Public Safety](#), 2008 OK 31, 183 P.3d 996 (Okla. 2008).
- ⁶ [Staggs v. Director of Revenue](#), 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007).
As to lawful arrest in a drunk driving case, generally, see §§ 130, 131.
As to review by a lower court, generally, see § 141.
- ⁷ § 154.
- ⁸ [Staggs v. Director of Revenue](#), 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007).
- ⁹ [Gallion v. Colorado Dept. of Revenue](#), 171 P.3d 217 (Colo. 2007); [Grosgebauer v. North Dakota Dept. of Transp.](#), 2008 ND 75, 747 N.W.2d 510 (N.D. 2008).
- ¹⁰ [McCoy v. North Dakota Dept. of Transp.](#), 2014 ND 119, 848 N.W.2d 659 (N.D. 2014).

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7A Am. Jur. 2d Automobiles § 126

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses

b. Grounds for Suspension or Revocation

(3) Refusal to Submit to Intoxication Test

(a) In General

§ 126. Purpose; characterization as civil, administrative action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(1.10\)](#) to [144.1\(1.20\)](#)

Statutes governing driving under the influence (DUI) are remedial and must be liberally construed¹ to protect the public² by obtaining the best evidence of drivers' blood alcohol content while insuring the cooperation of the person arrested,³ and by inhibiting driving under the influence.⁴ These purposes are nonpunitive and nonretributive.⁵

Practice Tip:

An appeal from an order suspending a driver's license because of the driver's refusal to take a breathalyzer examination is a civil case in which the state, as well as the motorist, is entitled to a jury.⁶

Because an implied consent statute is not a criminal statute, but a statute that confers an administrative penalty, it is not strictly construed in the driver's favor.⁷ The burden of proving the invalidity of the test, as an excuse for refusal, is upon the

licensee,⁸ and the state does not have the burden of proving that an approved test would have been ready and available if the driver had elected to take the test; in the absence of evidence to the contrary, the hearing officer may presume that the police had an approved test available.⁹

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Footnotes

- ¹ Byrd v. Kansas Dept. of Revenue, 43 Kan. App. 2d 145, 221 P.3d 1168 (2010), judgment aff'd, 295 Kan. 900, 287 P.3d 232 (2012).
- ² People v. Ciechanowski, 379 Ill. App. 3d 506, 318 Ill. Dec. 746, 884 N.E.2d 714 (1st Dist. 2008); Motor Vehicle Admin. v. Shepard, 399 Md. 241, 923 A.2d 100 (2007); Leduc v. Com., 421 Mass. 433, 657 N.E.2d 755 (1995); Com. v. Charles, 270 Pa. Super. 280, 411 A.2d 527 (1979).
- ³ Burnett v. Municipality of Anchorage, 806 F.2d 1447 (9th Cir. 1986); Rice v. Pierce, 203 Cal. App. 3d 1460, 250 Cal. Rptr. 832 (1st Dist. 1988); Furthmyer v. Kansas Dept. of Revenue, 256 Kan. 825, 888 P.2d 832 (1995); State v. Christopherson, 217 Mont. 449, 705 P.2d 121 (1985); State v. Nordness, 128 Wis. 2d 15, 381 N.W.2d 300 (1986).
- ⁴ Burnett v. Municipality of Anchorage, 806 F.2d 1447 (9th Cir. 1986); Rice v. Pierce, 203 Cal. App. 3d 1460, 250 Cal. Rptr. 832 (1st Dist. 1988); Motor Vehicle Admin. v. Shepard, 399 Md. 241, 923 A.2d 100 (2007); McKay v. Davis, 1982-NMSC-122, 99 N.M. 29, 653 P.2d 860 (1982).
- ⁵ Leduc v. Com., 421 Mass. 433, 657 N.E.2d 755 (1995).
- ⁶ Lacey v. Motor Vehicles Division, 45 Or. App. 419, 608 P.2d 599 (1980).
- ⁷ State v. Turner, 913 S.W.2d 158 (Tenn. 1995).
- ⁸ Meyer v. State, Dept. of Public Safety License Control and Driver Improvement Division, 312 So. 2d 289 (La. 1975).
- ⁹ State, Dept. of Highway Safety and Motor Vehicles v. Berry, 619 So. 2d 976 (Fla. 2d DCA 1993).

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses

b. Grounds for Suspension or Revocation

(3) Refusal to Submit to Intoxication Test

(a) In General

§ 127. Validity of statutes; constitutional questions

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West's Key Number Digest, [Automobiles](#)  132, 144.1(1.10) to 144.1(1.20)

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[Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal, 28 A.L.R.5th 459](#)

Statutes providing for the suspension or revocation of a driver's license because of the holder's refusal to submit to an intoxication test have been held to constitute a valid exercise of the police power of the state, and not to violate constitutional due process, equal protection, or self-incrimination protections.¹

These kinds of mandatory revocation of license statutes are not invalid as bills of attainder,² and do not violate the right to religious freedom of persons who object on religious grounds to having blood taken because of the state's compelling interest in maintaining safety on its highways.³

The right to challenge the validity of an implied-consent statute may be waived by the licensee.⁴

A statutory provision that unconscious persons are deemed not to have withdrawn their consent to blood alcohol tests does not violate either the Fourth Amendment or the Equal Protection Clause of the United States Constitution.⁵

A driver's prosecution for refusing to take a chemical breath test, after the state has revoked his or her driver's license for the same refusal, does not violate the Double Jeopardy Clause, since the civil statute providing for license revocation is not so punitive in purpose or effect as to be punishment under double jeopardy principles.⁶

CUMULATIVE SUPPLEMENT

Cases:

Statutory implied consent notice stating in part that defendant's refusal to submit to the required [breath] testing may be offered into evidence against him at trial, which was incorrect in light of holding in *Elliott v. State*, 824 S.E.2d 265, that admission of a defendant's refusal to submit to a breath test violated state constitutional prohibition on self-incrimination, was not unconstitutionally coercive on its face; inadmissibility of a defendant's refusal to submit to a breath test did not necessarily make implied consent notice itself unconstitutionally coercive, and Court of Appeals lacked authority to hold statutes unconstitutional to an extent outside scope of Supreme Court's holding in *Elliott*. Ga. Const. art. 1, § 1, para. 6; Ga. Code Ann. §§ 40-5-67.1(b), 40-6-392(d). *Kallon v. State*, 355 Ga. App. 546, 845 S.E.2d 348 (2020).

The statute directing law enforcement officers to test the blood of all drivers involved in a fatal, or likely fatal, motor vehicle accident without a warrant and describing when the results from those tests are admissible at trial is unconstitutional; overruling *State v. Cormier*, 928 A.2d 753, 29-A Me. Rev. Stat. § 2522(2) and (3). *State v. Weddle*, 2020 ME 12, 224 A.3d 1035 (Me. 2020).

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Footnotes

- ¹ *South Dakota v. Neville*, 459 U.S. 553, 103 S. Ct. 916, 74 L. Ed. 2d 748 (1983); *State v. Bodden*, 877 So. 2d 680 (Fla. 2004); *State v. Wang*, 291 Neb. 632, 867 N.W.2d 564 (2015); *State, Dept. of Motor Vehicles, Adm'r v. Hiatt*, 112 Nev. 868, 920 P.2d 116 (1996); *Pringle v. Wolfe*, 88 N.Y.2d 426, 646 N.Y.S.2d 82, 668 N.E.2d 1376 (1996); *Beylund v. Levi*, 2015 ND 18, 859 N.W.2d 403 (N.D. 2015).
Administrative license revocation statutory provisions pertaining to motorists who refuse to submit to chemical testing to detect intoxication do not violate the due process or equal protection rights of those motorists by treating them differently than motorists who submit to, but fail, such testing. *Betterman v. State, Dept. of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).
- ² *Daly v. State, Dept. of Highways*, 296 Minn. 238, 207 N.W.2d 541 (1973).
- ³ *People v. Sukram*, 142 Misc. 2d 957, 539 N.Y.S.2d 275 (Dist. Ct. 1989).
- ⁴ *State v. Higgins*, 338 A.2d 159 (Me. 1975).
- ⁵ *Filmon v. State*, 336 So. 2d 586 (Fla. 1976).
- ⁶ *Rivera v. Pugh*, 194 F.3d 1064 (9th Cir. 1999).

Works.

7A Am. Jur. 2d Automobiles § 128

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

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b. Grounds for Suspension or Revocation


(3) Refusal to Submit to Intoxication Test

(a) In General

§ 128. Sufficiency of police officer's report

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(1.10\)](#) to [144.1\(1.20\)](#), [144.2\(1\)](#), [144.2\(9.7\)](#), [144.2\(10.3\)](#)

A.L.R. Library

[Validity, Construction, and Application of State Statutes Providing for Revocation of Driver's License for Failure to Pay Child Support](#), 30 A.L.R.6th 483

Where a statute provides that the administrative agency must revoke a license to drive upon its receipt of a sworn report of a law enforcement officer that he or she had reasonable grounds to believe that the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highway while under the influence of intoxicating liquor and that the person refused to submit to a test for intoxication, the filing of such sworn report is jurisdictional,¹ but where such a report is in fact filed, the fact that the arresting officer did not raise his or her right hand or recite an oath does not render the report ineffective.² An arresting officer's sworn report which does not include information required by an administrative license revocation statute cannot be supplemented by evidence offered at a subsequent administrative license revocation hearing.³

In some jurisdictions, an officer's report about a driver's refusal to take an intoxication test must be endorsed by a third-party

witness to the refusal.⁴

CUMULATIVE SUPPLEMENT

Cases:

At hearing on administrative suspension of motorist's driver's license due to arrest for driving under influence (DUI), report of motorist's blood alcohol content (BAC) prepared by non-law enforcement source, but submitted by police officer, did not constitute an affidavit that had to be sworn to under penalty of perjury before it could be considered as evidence; statute authorizing Department of Revenue to consider reports of any law enforcement officer, which did not have to be made under oath, and "evidence contained in affidavits," did not expressly require all written reports to be sworn under penalty of perjury or to meet other affidavit requirements, those requirements would only be triggered when someone other than a police officer or the defendant submitted an affidavit, and other evidentiary rules were relaxed in a license revocation proceeding. [Colo. Rev. Stat. Ann. §§ 24-4-105\(7\), 42-2-126\(8\)\(c\), 42-2-126\(11\)](#). [Department of Revenue, Division of Motor Vehicles v. Rowland](#), 2018 CO 1, 408 P.3d 458 (Colo. 2018).

Arresting officer's supplemental sworn report to his affidavit and notice of implied-consent revocation did not cure the officer's facially deficient affidavit and notice of revocation, and, thus, did not support the authority of the Department of Public Safety (DPS) to revoke driver's license after driver failed to submit to State's test for alcohol; supplemental sworn report had no stamp or writing indicating when it was received by or was filed with DPS, and there was no proof of service of the supplemental sworn report with a new notice of revocation on driver or his attorney at any time before the hearing. [47 Okla. Stat. Ann. §§ 6-211\(F\), 754\(D\)](#). [Chandler v. State ex rel. Department of Public Safety](#), 2017 OK CIV APP 47, 419 P.3d 298 (Div. 3 2017).

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Footnotes

- ¹ [McLeod v. State of Dept. of Motor Vehicles](#), 16 Wash. App. 400, 556 P.2d 563 (Div. 1 1976).
- ² [Moyer v. Nebraska Dept. of Motor Vehicles](#), 275 Neb. 688, 747 N.W.2d 924 (2008); [Blackburn v. Motor Vehicles Division, Dept. of Transp.](#), 33 Or. App. 397, 576 P.2d 1267 (1978); [McLeod v. State of Dept. of Motor Vehicles](#), 16 Wash. App. 400, 556 P.2d 563 (Div. 1 1976).
- ³ [Yenney v. Nebraska Dept. of Motor Vehicles](#), 15 Neb. App. 446, 729 N.W.2d 95 (2007).
As to evidence at a license termination hearing, see [§ 154](#).
- ⁴ [Winsor v. Commissioner of Motor Vehicles](#), 101 Conn. App. 674, 922 A.2d 330 (2007) (a police dispatcher who witnessed the driver's refusal over closed circuit television was not a proper witness to the refusal, rendering the officer's report inadmissible in evidence).

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7A Am. Jur. 2d Automobiles § 129

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Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

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(a) In General

§ 129. Effect of acquittal or reduction of criminal charge

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(1.10\)](#) to [144.1\(1.20\)](#)

A.L.R. Library

[Validity, Construction, and Application of State Statutes Providing for Revocation of Driver's License for Failure to Pay Child Support](#), 30 A.L.R.6th 483

[Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal](#), 28 A.L.R.5th 459

The fact that a motorist is acquitted after trial of the charge of driving while intoxicated does not preclude motor vehicle officials from revoking or suspending his or her driver's license for refusal to submit to a chemical test for the purpose of determining the alcoholic content of his or her blood.¹ This is an application of the general rule that a prior acquittal in a criminal proceeding does not have a res judicata effect in a later civil proceeding.² However, there is authority that suspension cannot occur if the driver is not convicted of driving under the influence.³

A department of motor vehicles is not collaterally estopped from revoking a motorist's driver's license for his or her refusal to complete a blood alcohol test when requested to do so by a police officer where, in an underlying prosecution, the motorist

agreed to plead guilty in exchange for the parties' stipulated finding that the motorist had taken and completed a chemical test.⁴

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Footnotes

¹ Opinion of the Justices, 255 A.2d 643 (Me. 1969); Prucha v. Department of Motor Vehicles, 172 Neb. 415, 110 N.W.2d 75, 88 A.L.R.2d 1055 (1961); Marquardt v. Webb, 1976 OK 8, 545 P.2d 769 (Okla. 1976); Matter of Hansen, 298 N.W.2d 816 (S.D. 1980).

² Lofthouse v. Department of Motor Vehicles, 124 Cal. App. 3d 730, 177 Cal. Rptr. 601 (2d Dist. 1981).

³ McDonald v. Ferguson, 129 N.W.2d 348 (N.D. 1964).

⁴ Betyar v. Pierce, 205 Cal. App. 3d 1250, 252 Cal. Rptr. 907 (4th Dist. 1988).

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7A Am. Jur. 2d Automobiles § 130

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III. Licensing, Taxation, and Registration

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(b) Conditions Required for Request to Submit to Testing

§ 130. Lawful arrest or proper stop

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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[Validity, Construction, and Application of State Statutes Providing for Revocation of Driver's License for Failure to Pay Child Support, 30 A.L.R.6th 483](#)

[Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal, 28 A.L.R.5th 459](#)

Refusing a chemical test is not a crime, unless it can be proven beyond a reasonable doubt that an officer had probable cause to believe the person was driving, operating, or in physical control of a motor vehicle while impaired.¹ Under some statutes, the request to submit to a test for intoxication, refusal of which will result in the suspension or revocation of a driver's license, must be made pursuant to a lawful arrest² or proper stop.³ However, some jurisdictions hold that the revocation of a driver's license for refusal to submit to a chemical test is proper, even though the arrest is illegal; the validity of the arrest is irrelevant, these cases say, because the rule excluding illegally obtained evidence does not apply in civil proceedings.⁴ In other jurisdictions, the arrest necessary before the reading of implied consent rights, regarding chemical testing for alcohol or drug intoxication, to a motorist who has not been involved in a traffic accident resulting in serious injuries or fatalities does

not have to be a formal arrest in which the officer explicitly states to the motorist that he or she has been arrested; implied consent is triggered at the point that the motorist is not free to leave and a reasonable person in his or her position would not believe that the detention is temporary, regardless of whether a formal arrest has occurred.⁵

Where the applicable statute requires that an arrest precede the officer's request for a sobriety test, an "arrest" generally is held to occur when there is a physical restraint on the person's personal freedom.⁶

Observation:

The federal implied-consent statute⁷ applies only in instances in which an arrest of the suspect occurs.⁸

Different jurisdictions have arrived at different results as to whether the lawful stop can take place on private land, not open to the general public. While some jurisdictions find that the person's conduct must not have occurred on private property which is not open to public access,⁹ other authority finds that the working of the statute unambiguously expressed the legislature's intent to prohibit an intoxicated person from driving a vehicle anywhere in the state and that the Commissioner of the Division of Motor Vehicles had the authority to administratively revoke licenses of all drivers found driving a vehicle anywhere within the physical boundaries of the state while under the influence of alcohol, even if the vehicle was driven only upon private property not open to the general public.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

The lawn beyond the gravel driveway of licensee's private residence, where licensee's truck was parked, did not qualify as a private area to which the public had a right of access for vehicular use, and thus police officer lacked grounds to arrest licensee for actual physical control of a motor vehicle while under the influence and there were no grounds to revoke licensee's driving privileges after he failed to consent to a chemical breath test; statute prohibiting actual physical control of a motor vehicle while under the influence did not reach all private property, the area where licensee's truck was located was not an area accessible to the public, and the area was not open to the general public for purposes of visiting, making deliveries or otherwise interacting with licensee, overruling *Wiederholt v. N.D. Dep't of Transp.*, 462 N.W.2d 445, *State v. Novak*, 338 N.W.2d 637, and *Fetzer v. Dir., N.D. Dep't of Transp.*, 474 N.W.2d 71. NDCC § 39-08-01. *Suelzle v. North Dakota Department of Transportation*, 2020 ND 206, 949 N.W.2d 862 (N.D. 2020).

County sheriff's deputy lacked authority to arrest non-member Native American motorist for driving under influence (DUI) within boundaries of reservation, as prerequisite to revocation of motorist's driver's license due to motorist's refusal to take breath test upon arrest. NDCC § 39-20-01(2). *Olson v. North Dakota Department of Transportation*, 2018 ND 94, 909 N.W.2d 676 (N.D. 2018).

[END OF SUPPLEMENT]

- ¹ State v. Koppi, 798 N.W.2d 358 (Minn. 2011).
- ² Ayala v. Colorado Dept. of Revenue, Motor Vehicle Division, 43 Colo. App. 357, 603 P.2d 979 (App. 1979); Dale v. Ciccone, 233 W. Va. 652, 760 S.E.2d 466 (2014).
- ³ People v. Biagi, 409 Ill. Dec. 721, 68 N.E.3d 829 (App. Ct. 5th Dist. 2017).
- ⁴ Matter of Gardner, 39 N.C. App. 567, 251 S.E.2d 723 (1979); Corry v. Com., 59 Pa. Commw. 324, 429 A.2d 1229 (1981).
- ⁵ Hough v. State, 279 Ga. 711, 620 S.E.2d 380 (2005).
- ⁶ Corry v. Com., 59 Pa. Commw. 324, 429 A.2d 1229 (1981).
- ⁷ 18 U.S.C.A. § 3118.
- ⁸ U.S. v. Chapel, 55 F.3d 1416 (9th Cir. 1995).
- ⁹ State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).
- ¹⁰ Reed v. Beckett, 795 S.E.2d 509 (W. Va. 2016).

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7A Am. Jur. 2d Automobiles § 131

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(3) Refusal to Submit to Intoxication Test

(b) Conditions Required for Request to Submit to Testing

§ 131. Lawful arrest or proper stop—Probable cause

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(1.11\)](#), [144.1\(1.20\)](#)

A.L.R. Library

[Validity, Construction, and Application of State Statutes Providing for Revocation of Driver's License for Failure to Pay Child Support](#), 30 A.L.R.6th 483

[Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal](#), 28 A.L.R.5th 459

While some state statutes have required that an arrest for driving while intoxicated, and a subsequent proceeding for suspension of the driver's license for failure to submit to a sobriety test, is permissible only if the arresting officer personally observes the licensee driving the vehicle,¹ other statutes have allowed an arrest for driving under the influence when not committed in the presence of an officer upon probable cause.² Probable cause to believe a motorist was driving while intoxicated, as would support the revocation of license under implied consent law for a motorist's refusal of breath test, is based upon the facts viewed by a prudent, cautious and trained police officer and not the officer's subjective belief.³ Probable cause incorporates the individual characteristics and intuitions of the officer to some extent; nonetheless, the reasonableness of the officer's actions is an objective inquiry, even if reasonableness is evaluated in light of an officer's training and

experience.⁴

Suspensions or revocations of driver's licenses for refusal to take a sobriety test have also been sustained under varying circumstances as against the contention that an arrest was made without probable cause.⁵ Some courts apply a reasonable suspicion standard rather than probable cause,⁶ and others view the issue of validity of the arrest (and, therefore, the issue of probable cause for the arrest) as irrelevant to the suspension proceedings.⁷ Still others look to whether the officer had the right to make the arrest.⁸

At a revocation hearing under an implied-consent statute, the trial court, for the purpose of the probable cause determination, is not allowed to weigh the evidence between the parties; instead, the trial court simply must ascertain the plausibility of the police officer's account.⁹

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Footnotes

- ¹ [Mercer v. Department of Motor Vehicles](#), 53 Cal. 3d 753, 280 Cal. Rptr. 745, 809 P.2d 404 (1991).
- ² [Hassfurth v. State](#), 988 N.E.2d 811 (Ind. Ct. App. 2013); [Turner v. State, Dept. of Public Safety](#), 350 So. 2d 984 (La. Ct. App. 2d Cir. 1977); [Vanderpool v. Director of Revenue](#), 226 S.W.3d 108 (Mo. 2007); [June v. Tofany](#), 34 A.D.2d 732, 311 N.Y.S.2d 782 (4th Dep't 1970); [Com. Dept. of Transp. Bureau of Traffic Safety v. Shultz](#), 25 Pa. Commw. 598, 360 A.2d 754 (1976).
- ³ [Steele-Danner v. Director of Revenue](#), 229 S.W.3d 607 (Mo. Ct. App. S.D. 2007) (not released for publication).
- ⁴ [State v. Koppi](#), 798 N.W.2d 358 (Minn. 2011).
- ⁵ [Freeman v. Department of Motor Vehicles](#), 70 Cal. 2d 235, 74 Cal. Rptr. 259, 449 P.2d 195 (1969); [Bath v. Heckers](#), 522 P.2d 108 (Colo. App. 1974); [Crosser v. Iowa Dept. of Public Safety](#), 240 N.W.2d 682 (Iowa 1976); [Marben v. State, Dept. of Public Safety](#), 294 N.W.2d 697 (Minn. 1980); [Smith v. Spradling](#), 536 S.W.2d 776 (Mo. Ct. App. 1976); [Witte v. Hjelle](#), 234 N.W.2d 16 (N.D. 1975).
- ⁶ [State v. Jenkins](#), 673 A.2d 1094 (R.I. 1996).
- ⁷ § 130.
- ⁸ [Brunette v. State](#), 2016 MT 128, 383 Mont. 458, 372 P.3d 476 (2016).
- ⁹ [State v. Nordness](#), 128 Wis. 2d 15, 381 N.W.2d 300 (1986).

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(3) Refusal to Submit to Intoxication Test

(b) Conditions Required for Request to Submit to Testing

§ 132. Reasonable grounds for request to take the test

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(1.11), 144.1(1.20), 144.2(10.3)

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[Validity, Construction, and Application of State Statutes Providing for Revocation of Driver's License for Failure to Pay Child Support, 30 A.L.R.6th 483](#)

[Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal, 28 A.L.R.5th 459](#)

For a refusal to take a sobriety test to constitute grounds for suspension or revocation of a driver's license under an implied-consent statute, the officer requesting the test must have reasonable grounds to believe that the offense of driving under the influence of alcohol has been committed by the driver.¹ "Reasonable grounds" means a reasonable articulable suspicion and not preponderance of the evidence or probable cause.² Such reasonable grounds to believe that the offense has been committed have been found in a number of cases under varying circumstances.³ Nevertheless, in some jurisdictions, "reasonable grounds" to believe a person was driving a motor vehicle while in an intoxicated or drugged condition is simultaneous or virtually synonymous with probable cause.⁴

Under some statutes, a passenger's license may be suspended for failure to take a breath test, despite the fact that the passenger was not operating the vehicle, if the court finds that the officer had reasonable grounds to believe that the passenger was operating or controlling the vehicle.⁵ A vehicle occupant's insertion of a key into a vehicle's ignition while seated in the driver's seat constitutes "operation" of a motor vehicle within the meaning of an implied consent law.⁶

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Footnotes

- ¹ Motor Vehicle Admin. v. Shepard, 399 Md. 241, 923 A.2d 100 (2007); Foks v. Andrews, 55 Ohio App. 2d 253, 9 Ohio Op. 3d 391, 380 N.E.2d 756 (6th Dist. Lucas County 1977).
As to the requirement of an arrest for driving under the influence and probable cause for that arrest, see §§ 130, 131.
- ² Motor Vehicle Admin. v. Shepard, 399 Md. 241, 923 A.2d 100 (2007).
- ³ Johnson v. Motor Vehicle Division, Dept. of Revenue, 38 Colo. App. 230, 556 P.2d 488 (App. 1976); State v. Gustafson, 55 Haw. 65, 515 P.2d 1256 (1973); Motor Vehicle Admin. v. Shepard, 399 Md. 241, 923 A.2d 100 (2007).
- ⁴ Langley v. Director of Revenue, 467 S.W.3d 870 (Mo. Ct. App. W.D. 2015).
- ⁵ Shaw v. Vermont Dist. Court, Unit No. 3, Franklin Circuit, 152 Vt. 1, 563 A.2d 636 (1989).
- ⁶ Sengchanthong v. Commissioner of Motor Vehicles, 281 Conn. 604, 917 A.2d 942 (2007).

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(c) Notification of Right to Refuse Test; Right to Counsel

§ 133. Notification of right to refuse test for intoxication and right to counsel; generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(1.11\)](#), [144.1\(1.20\)](#)

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[Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal](#), 28 A.L.R.5th 459

Under most statutes, a suspension or revocation of an operator's license for refusal to submit to an intoxication test is unwarranted unless the licensee was warned, at the time of the request to take the test, of the consequences of his or her refusal to do so. Under such statutes, the driver must be clearly warned that the mere refusal to take the prescribed test would be the cause of revocation or suspension of the license,¹ and that a subsequent conviction or dismissal of the charge of driving while intoxicated is immaterial.² When the arresting officer informs the driver that refusal to submit to chemical testing could result in the suspension of the person's driver's license, due process does not require that the arresting officer inform the driver of all the consequences of refusing to submit to testing; the officer has made it clear that refusing the test is not a "safe harbor," free of adverse consequences.³ Police officers are also not required to spend time either cajoling an arrestee or waiting for him or her to change his or her mind, in context of statute requiring a one-year license suspension if a motorist arrested on reasonable grounds for driving under the influence (DUI) refuses to submit to a chemical test.⁴

Drivers who are prosecuted for the offense of refusing to submit to a breath test and who claim that they were not informed of the consequences of refusing to submit to a breath test because they do not speak or understand English must bear the burden of production and persuasion on that issue.⁵

A license cannot be properly revoked or suspended where the licensee is advised that the test is not mandatory.⁶ In giving this notice, the arresting officer is not required to attempt repeatedly to admonish a person arrested for DUI until the arrestee is willing to listen, despite interruptions and other uncooperative conduct.⁷ In the case of a person who resists arrest strongly enough that assistance is required to detain him or her, and the officer reasonably believes that offering the test would be futile, an officer is not required to do so.⁸ The required notice may be properly given by an officer other than the arresting officer, such as where the defendant is arrested by one officer, but the notice is given by a second officer while the defendant is being transported to a police station for testing.⁹

Practice Tip:

A prima facie showing that the proper notification was given to the driver may be made by presenting the arresting officer's certification and order of suspension, along with an advice of rights form, where both items are signed by the motorist.¹⁰

When an officer is aware that the person he or she is arresting for DUI holds a commercial vehicle operator's license, the officer must inform the arrestee, at the time of his or her arrest, of the commercial vehicle provisions of the implied consent law, or that person's driver's license cannot be suspended under the implied consent law,¹¹ though there is authority to the contrary.¹² On the other hand, an officer who delivers the commercial vehicle warnings to an arrestee who does not have a commercial license does give a warning that fulfills the notice requirements of such statutes.¹³

CUMULATIVE SUPPLEMENT

Cases:

Since police department's informed consent form, informed arrestee only that sanctions might result for refusal to submit to chemical testing and did not explain what the potential sanctions were, law enforcement had to conduct a more detailed advisement in compliance with implied consent law before sanctions could be imposed in operating vehicle under the influence of intoxicants case; implied consent law required that arrestee be informed of the sanctions which could apply, not simply that unspecified sanctions might exist. [Haw. Rev. Stat. § 291E-15](#). [State v. Hosaka](#), 472 P.3d 19 (Haw. 2020).

Requirements of statute, stating that arrestee must be given opportunity to refuse to submit to chemical testing and, if arrestee refuses, then arrestee must be informed of the specific sanctions that can result and asked whether he still refuses testing, are only triggered if arrestee, in operating vehicle under influence of intoxicants case, initially refuses testing, and they do not apply to arrestees who, choose not to withdraw their consent to chemical testing when first asked. [Haw. Rev. Stat. § 291E-15](#). [State v. Hosaka](#), 472 P.3d 19 (Haw. 2020).

[END OF SUPPLEMENT]

Footnotes

- ¹ Luk v. Com., 421 Mass. 415, 658 N.E.2d 664 (1995); Proulx v. Director, New Hampshire Div. of Motor Vehicles, 154 N.H. 350, 910 A.2d 1208 (2006); In re Smith, 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243 (2008); State v. Sutton, 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).
- ² Thompson v. Department of Motor Vehicles, 107 Cal. App. 3d 354, 165 Cal. Rptr. 626 (5th Dist. 1980); Harrington v. Tofany, 59 Misc. 2d 197, 298 N.Y.S.2d 283 (Sup 1969); State v. Sutton, 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).
- ³ Olson v. State, 260 P.3d 1056 (Alaska 2011) (police officer had no obligation under the implied-consent law to inform the defendant that, due to his prior record, a conviction for refusal to submit to a chemical test would be a felony); Chancellor v. Dozier, 283 Ga. 259, 658 S.E.2d 592 (2008) (lifetime disqualification from having a commercial driver's license).
- ⁴ Grogg v. Com., Dept. of Transp., Bureau of Driver Licensing, 79 A.3d 715 (Pa. Commw. Ct. 2013), judgment entered, 69 A.3d 779 (Pa. Commw. Ct. 2013).
- ⁵ State v. Marquez, 202 N.J. 485, 998 A.2d 421 (2010).
- ⁶ Sweeney v. Tofany, 30 A.D.2d 934, 293 N.Y.S.2d 876 (4th Dep't 1968); Peppelman v. Com., 44 Pa. Commw. 262, 403 A.2d 1041 (1979).
- ⁷ Morphey v. Department of Motor Vehicles, 137 Cal. App. 3d 738, 188 Cal. Rptr. 126 (1st Dist. 1982); Department of Public Safety v. Weinrich, 263 N.W.2d 690 (S.D. 1978).
- ⁸ State v. Entzel, 116 Wash. 2d 435, 805 P.2d 228 (1991).
- ⁹ Werner v. Department of Public Safety, 288 N.W.2d 82 (S.D. 1980).
- ¹⁰ Motor Vehicle Admin. v. Karwacki, 340 Md. 271, 666 A.2d 511 (1995).
- ¹¹ State v. Geraldson, 176 Wis. 2d 487, 500 N.W.2d 415 (Ct. App. 1993).
- ¹² Robinson v. Kansas Dept. of Revenue, 37 Kan. App. 2d 425, 154 P.3d 508 (2007) (an officer was not required to advise the driver of a noncommercial vehicle, holder of a commercial driver's license, that if he failed a sobriety test or if he refused testing, his commercial driver's license could be suspended for one year); Escarcega v. State ex rel. Wyo. Dept. of Transp., 2007 WY 38, 153 P.3d 264 (Wyo. 2007).
- ¹³ Village of Elm Grove v. Landowski, 181 Wis. 2d 137, 510 N.W.2d 752 (Ct. App. 1993).

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Automobiles and Highway Traffic

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(c) Notification of Right to Refuse Test; Right to Counsel

§ 134. Substantial compliance with notification requirements

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If the licensee is not misled, substantial compliance with the notification provisions of an implied-consent statute is sufficient.¹ Where the penalties of the implied-consent statute are overstated by the police officer the overstatement constitutes substantial compliance with the law, unless the overstatement prejudices the defendant, and a revocation is justified.² On the other hand, if the arresting officer fails to substantially comply with the notification requirement, the driver's license cannot be suspended under the implied consent law.³

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Footnotes

¹ Connors v. Tofany, 37 A.D.2d 402, 326 N.Y.S.2d 365 (3d Dep't 1971); Asbridge v. North Dakota State Highway Com'r, 291 N.W.2d 739 (N.D. 1980); In re Smith, 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243 (2008); State v. Sutton, 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).

² State v. Sutton, 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).

³ State v. Sutton, 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(1.20)

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[Denial of Accused's Request for Initial Contact with Attorney—Drunk Driving Cases](#), 109 A.L.R.5th 611

[Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal](#), 28 A.L.R.5th 459

While some courts have found that the refusal to take a sobriety test until after consultation with an attorney does not constitute a justifiable or reasonable refusal to take such test,¹ other courts have found that a motorist has a right to consult with counsel before deciding whether to submit to testing; and refusal to take such a test until after consultation with an attorney is a justifiable and reasonable refusal, and may not result in the suspension or revocation of a license.² In some jurisdictions in which the implied consent law mandates that a driver arrested for driving while intoxicated (DWI) be advised of certain information upon being requested to submit to a chemical test, it does not require the arresting officer to inform the motorist that he or she has the right to consult an attorney before submitting to the test.³ However, a driver arrested for DWI may request to speak to an attorney and must be given a certain amount of time in which to attempt to contact an attorney; after that time has elapsed, if the driver still refuses to take the alcohol breath test, the refusal is final.⁴ If the driver is not

given the mandated time period in which to contact his or her attorney, the refusal of an alcohol breath test is invalid.⁵

A motorist's mistaken belief that he or she has a right to see an attorney prior to deciding whether to submit to testing does not excuse a refusal to take the test, where the police have adequately explained that there is no such right.⁶ However, where the police fail to make it clear that there is no right to counsel, a motorist's refusal to be tested before conferring with counsel may not be the basis for a suspension.⁷

CUMULATIVE SUPPLEMENT

Cases:

Jail officers violated procedural due process by not allowing defendant access to phone to call attorney until morning after arrest for driving under the influence (DUI) despite his requests to call attorney at time of administration of State's test for blood alcohol concentration (BAC); allowing a phone call would have assured that defendant was given an opportunity to gather evidence to refute the charge against him, and additional fiscal or administrative burden of allowing DUI arrestees like defendant to make a phone call to an attorney after administration of a BAC test was minimal. [U.S. Const. Amend. 14, State v. Stegall, 477 P.3d 972 \(Idaho 2020\)](#).

A driver's right, under implied consent statute, to a 20-minute period in which to attempt to contact an attorney includes the right to speak privately with the attorney. [V.A.M.S. § 577.041.1, Roesing v. Director of Revenue, 573 S.W.3d 634 \(Mo. 2019\)](#).

Driver's limited right to speak to attorney before deciding whether to take field sobriety test was violated when officer responding to accident scene took her cellular phone away and did not allow her to finish her phone call with her attorney, and, thus, suppression of all evidence obtained by police subsequent to the taking of driver's cellular phone was warranted, including driver's incriminating statements and her performance of any field sobriety tests. [People v. Rossi, 63 N.Y.S.3d 828 \(J. Ct. 2017\)](#).

Results of chemical test, which yielded a blood alcohol content of .09%, were admissible in trial for driving while intoxicated, despite defendant's noncustodial request for counsel prior to test, where defendant unequivocally agreed to submit to breath test, and never invoked his qualified right to consult with counsel regarding his decision to take test. [People v. Benoit, 66 Misc. 3d 218, 113 N.Y.S.3d 852 \(N.Y. City Crim. Ct. 2019\)](#).

The limited statutory right of consultation with an attorney prior to taking a chemical test must be balanced against the need for an accurate and timely chemical test. [NDCC § 29-05-20, City of Jamestown v. Schultz, 2020 ND 154, 946 N.W.2d 740 \(N.D. 2020\)](#).

Police officer, who performed alcohol concentration breath test sequence on motorist after arresting motorist for driving a motor vehicle while under the influence of intoxicating liquor, did not violate motorist's limited statutory right to consult with counsel prior to submitting to a chemical test, although motorist requested the opportunity to speak with counsel between taking the first and second samples of breath during the test sequence, and although officer was required to provide motorist with a reasonable opportunity to speak with counsel; motorist's right to consult was not an unlimited right, and allowing motorist to stop the test prior to submitting the second sample would have invalidated the entire test sequence and materially interfered with the test administration. [NDCC §§ 29-05-20, 39-08-01, 39-20-07\(5\), State v. Von Ruden, 2017 ND 185, 900 N.W.2d 58 \(N.D. 2017\)](#).

[END OF SUPPLEMENT]

Footnotes

- ¹ Kurecka v. State, 67 So. 3d 1052 (Fla. 4th DCA 2010); State v. Severino, 56 Haw. 378, 537 P.2d 1187 (1975); Mills v. Bridges, 93 Idaho 679, 471 P.2d 66 (1970); Com. v. Neary-French, 475 Mass. 167, 56 N.E.3d 159 (2016) (under the Sixth Amendment, there is no right to counsel at the time a defendant is deciding whether to submit to a breath alcohol test); Winter v. Peterson, 208 Neb. 785, 305 N.W.2d 803 (1981); People v. Washington, 23 N.Y.3d 228, 989 N.Y.S.2d 670, 12 N.E.3d 1099 (2014); Cavaness v. Cox, 598 P.2d 349 (Utah 1979); Haas v. State, Dept. of Licensing, 31 Wash. App. 334, 641 P.2d 717 (Div. 1 1982).
- ² Roberts v. State of Me., 48 F.3d 1287 (1st Cir. 1995); Whisenhunt v. State, Dept. of Public Safety, Div. of Motor Vehicles, 746 P.2d 1298 (Alaska 1987); Dain v. Spradling, 534 S.W.2d 813 (Mo. Ct. App. 1976); Kuntz v. State Highway Com'r, 405 N.W.2d 285 (N.D. 1987).
- ³ Staggs v. Director of Revenue, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007).
- ⁴ Commonwealth v. Bedway, 466 S.W.3d 468 (Ky. 2015) (arresting officers must make reasonable accommodations in allowing an accused his or her right to attempt to contact an attorney); Staggs v. Director of Revenue, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007) (20 minutes); People v. Borst, 49 Misc. 3d 63, 20 N.Y.S.3d 838 (App. Term 2015); Herrman v. Director, North Dakota Dept. of Transp., 2014 ND 129, 847 N.W.2d 768 (N.D. 2014) (if a person arrested for driving under influence (DUI) asks to consult with an attorney before deciding to take a chemical test, he must be given a reasonable opportunity to do so if it does not materially interfere with the administration of the test); Texas Dept. of Public Safety v. Schleisner, 343 S.W.3d 292 (Tex. App. Houston 14th Dist. 2011).
- ⁵ Staggs v. Director of Revenue, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007).
- ⁶ Gaunt v. Motor Vehicle Div., Dept. of Transp., State of Ariz., 136 Ariz. 424, 666 P.2d 524 (Ct. App. Div. 1 1983).
- ⁷ State v. Taniguchi, 72 Haw. 235, 815 P.2d 24 (1991).

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[Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal, 28 A.L.R.5th 459](#)

The validity of a suspension or revocation under an implied-consent statute generally is not affected by the failure to give the motorist a choice regarding which of the possible kinds of tests he or she will submit to.¹

A defendant's conviction for refusal to take a breath test after he was arrested for driving while intoxicated did not violate due process because the defendant volunteered to take a blood test instead, where the government had an interest in the orderly and expeditious processing of arrestees by having motorists submit to breath tests at a police station, rather than demanding transport to a medical facility for a blood test.²

Under some statutes, the arresting officer makes the choice of which test will be administered, and a refusal to take the type of test specified is grounds for suspension, regardless of the driver's offer to submit to another type of test.³ Under such a

statute, the driver has no control over the type of test to be administered, and the police officer may request an additional or different test after choosing the type of test to be used.⁴ Under other statutes, a choice must be made available to the licensee.⁵ These type of statutes, however, have been interpreted as not allowing the arrestee to determine when the chosen test will be administered.⁶ Under a statute giving the driver a choice of the type of test to be performed, a driver who refuses to take a blood or breath test and consents to a urine test, but fails to produce a urine sample, is treated as having refused to submit to testing.⁷

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Footnotes

- ¹ Hill v. Otte, 258 Ind. 421, 281 N.E.2d 811 (1972); Raine v. Curry, 45 Ohio App. 2d 155, 74 Ohio Op. 2d 171, 341 N.E.2d 606 (10th Dist. Franklin County 1975).
- ² Hamilton v. Municipality of Anchorage, 878 P.2d 653 (Alaska Ct. App. 1994).
- ³ State v. Christopherson, 217 Mont. 449, 705 P.2d 121 (1985); State v. Turner, 913 S.W.2d 158 (Tenn. 1995); Elliott v. Dorius, 557 P.2d 759 (Utah 1976).
- ⁴ State v. Pawlow, 98 Wis. 2d 703, 298 N.W.2d 220 (Ct. App. 1980).
- ⁵ Buchanan v. Department of Motor Vehicles, 100 Cal. App. 3d 293, 160 Cal. Rptr. 557 (2d Dist. 1979); State Dept. of Highways v. McWhite, 286 Minn. 468, 176 N.W.2d 285 (1970); Dale v. Painter, 234 W. Va. 343, 765 S.E.2d 232 (2014).
- ⁶ Buchanan v. Department of Motor Vehicles, 100 Cal. App. 3d 293, 160 Cal. Rptr. 557 (2d Dist. 1979).
- ⁷ Noli v. Department of Motor Vehicles, 125 Cal. App. 3d 446, 178 Cal. Rptr. 5 (5th Dist. 1981); Mackey v. Director of Dept. of Motor Vehicles, 194 Neb. 707, 235 N.W.2d 394 (1975).

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[Drunk driving: Motorist's right to private sobriety test, 45 A.L.R.4th 11](#)

Some statutes provide that a person required to submit to sobriety testing under an implied consent law has the right to have additional tests administered by a qualified person of his or her own choice.¹ Such statutes have been interpreted as not allowing a motorist to refuse to submit to the test selected by the police until he or she has taken the test of his or her choosing.² However, if an individual who has been arrested on suspicion of being under the influence of alcohol or drugs is denied his statutory right to an independent blood test, results of blood tests administered at the direction of law enforcement may be suppressed or the charges may be dismissed.³

A suspect may also be entitled to a meaningful opportunity to choose the testing facility for purposes of obtaining an independent chemical test incident to arrest for driving under the influence (DUI); if the suspect's choice is unreasonable, however, a law enforcement officer is justified in refusing to accommodate the request.⁴ The question whether the officer

made a reasonable effort to accommodate an accused's request to take an independent blood test by a qualified person of the accused's own choosing is a determination which depends largely on local circumstances.⁵ The factors to be considered by the trial court in determining whether an officer reasonably accommodated an accused person's request for an additional chemical test include, but are not limited to: (1) availability of or access to funds or resources to pay for the requested test; (2) a protracted delay in the giving of the test if the officer complies with the request; (3) availability of police time and other resources; (4) location of the requested facilities, e.g., whether the requested facility is in a different jurisdiction; and (5) opportunity and ability of accused to make arrangements personally for the testing.⁶

The right to an independent test of one kind may be waived by submitting to a second test of another type during booking,⁷ and an arresting officer complies with a statute giving drivers arrested for driving under the influence the right to an independent test, where the officer transports the defendant to a hospital, but defendant declines to go forward with an independent blood test after talking to a nurse.⁸

CUMULATIVE SUPPLEMENT

Cases:

Arresting officer's conduct in driving accused, who was charged with driving under the influence (DUI), to her home that was ten miles from hospital, rather than releasing her at the police station, which was closer to hospital, was not a departure from standard procedure that frustrated accused's due process right to an independent blood test; accused never asked to be released at station, but rather accused requested that officer drive her to the hospital, which officer had no obligation to do, officer stated that he would only release an intoxicated person at the station if he or she had arranged for a ride home, and accused, who was in an apparent state of intoxication, failed to obtain transportation from the station. [U.S. Const. Amend. 14](#); [Mont. Code Ann. § 61-8-405\(2\)](#). [State v. Neva](#), 2018 MT 81, 415 P.3d 481 (Mont. 2018).

[END OF SUPPLEMENT]

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Footnotes

¹ [Litts v. Melton](#), 57 A.D.2d 1027, 395 N.Y.S.2d 264 (3d Dep't 1977); [North Dakota Dept. of Transp. v. DuPaul](#), 487 N.W.2d 593 (N.D. 1992); [Greenwood v. Department of Motor Vehicles](#), 13 Wash. App. 624, 536 P.2d 644, 98 A.L.R.3d 566 (Div. 1 1975).

² [Litts v. Melton](#), 57 A.D.2d 1027, 395 N.Y.S.2d 264 (3d Dep't 1977); [Greenwood v. Department of Motor Vehicles](#), 13 Wash. App. 624, 536 P.2d 644, 98 A.L.R.3d 566 (Div. 1 1975).
Under the implied-consent statute, a custodial suspect has the right to an independent blood-alcohol-level test only after first submitting to the police-administered BAC test. [State v. Larivee](#), 656 N.W.2d 226 (Minn. 2003).

³ [Koenig v. North Dakota Dept. of Transp.](#), 2012 ND 18, 810 N.W.2d 333 (N.D. 2012).

⁴ [Luckey v. State](#), 313 Ga. App. 502, 722 S.E.2d 114 (2012); [State v. May](#), 293 Kan. 858, 269 P.3d 1260 (2012).

⁵ [State v. Davis](#), 309 Ga. App. 558, 711 S.E.2d 76 (2011).

⁶ [Ritter v. State](#), 306 Ga. App. 689, 703 S.E.2d 8 (2010).

⁷ [Morgan v. State](#), 212 Ga. App. 394, 442 S.E.2d 257 (1994).

⁸ [Crawford v. City of Forest Park](#), 215 Ga. App. 234, 450 S.E.2d 237 (1994).

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[Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal, 28 A.L.R.5th 459](#)

[Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal, 68 A.L.R.4th 776](#)

In determining whether a driver has refused a breath alcohol test, the driver's entire conduct, not merely words expressing consent or refusal, informs the determination.¹ Anything short of an unqualified, unequivocal assent by an arrested motorist to an officer's request that the arrested motorist take the chemical test to detect intoxication constitutes a refusal to do so, as basis for administrative license revocation.² If an arrested driver is requested to submit to a breath test and, after the statutorily required advice is given, he or she does not promptly do so, he or she has refused to submit, subject to a flexible regard for arrested persons' freedom to communicate, that is, communicate with another person, such as an attorney; but a refusal to submit need not be explicit, as any attempts to delay or impose conditions on testing amount to a refusal of the test.³ A refusal of a driver to submit to chemical tests for intoxication has been interpreted to mean a volitional failure to do what is necessary in order that chemical tests can be performed.⁴ Under statutes providing for the suspension or revocation of a

driver's license because of the refusal of the holder to submit to an intoxication test, various actions or positions have been held to be a refusal, or an unreasonable refusal, to take such test, among which are refusal to accompany a police officer to a distant hospital for the purpose of the test,⁵ conditioning consent upon the test being given at a hospital of the driver's choice,⁶ and an assertion, by the motorist, of physical incapacity,⁷ or because, by reason of some physical ailment or disability, submission to the test would cause discomfort to the driver.⁸ An unreasonably delayed consent to testing,⁹ a refusal to take the test followed by a request for the test after an unreasonable delay,¹⁰ continually avoiding or ignoring the arresting officer's request for a test after numerous opportunities to comply,¹¹ a consent to take the test "under protest,"¹² intentionally preventing accurate testing,¹³ a failure to follow an officer's directions concerning performance of the test,¹⁴ stubborn silence or by a negative answer,¹⁵ fleeing the scene,¹⁶ or an ambiguous reply, may also constitute refusal.¹⁷ An arrested motorist "refuses" to submit to a chemical test to detect intoxication when the motorist's conduct, demonstrated under the circumstances confronting the officer requesting the chemical test, justifies a reasonable person's belief that the motorist understood the officer's request for a test and manifested a refusal or unwillingness to submit to the requested test.¹⁸

Certain severe physical injuries may excuse a driver's refusal to be tested.¹⁹

Observation:

A driver's initial refusal to submit to chemical testing in accordance with express consent law may be rectified by later, though timely, consent and cooperation;²⁰ however, where the officer has requested the test, determined that the driver is refusing testing, completed his duties prescribed by statute to deal with a refusal, and left the presence of the driver, the time period during which the driver must show cooperation has come to an end.²¹

CUMULATIVE SUPPLEMENT

Cases:

Punishing drunk-driving suspects' refusal to undergo a blood test with automatic license revocation does not violate their due process rights if they have been arrested upon probable cause; on the contrary, this kind of summary penalty is unquestionably legitimate. (Per Justice Alito, joined by three Justices, with one Justice concurring in the judgment.) [U.S. Const. Amends. 4, 14. *Mitchell v. Wisconsin*, 139 S. Ct. 2525 \(2019\).](#)

Finding of Commissioner of Motor Vehicles, that driver refused to submit to breath test, was not supported by substantial evidence, despite a printout from breath test which read "test aborted refusal" and report in which arresting officer stated driver refused to submit to the breath test, where information before the hearing officer included only conclusions by two police officers who were at the scene, arrested driver, and processed driver, but did not include descriptions of driver's behavior, conduct, or words indicating that driver refused. [Regs., Conn. State Agencies § 14-227b-5. *Fernschild v. Commissioner of Motor Vehicles*, 177 Conn. App. 472, 172 A.3d 864 \(2017\).](#)

Trial court's finding, that motorist failed to establish that he did not refuse to submit to chemical test under summary suspension statute, also known as the implied consent statute, was not against manifest weight of evidence in proceeding to rescind statutory summary suspension of motorist's driver's license; even if motorist established that he did not refuse to submit to breath test, he failed to establish that he did not refuse to submit to a test of his blood or urine, and sworn report showed motorist had refused to submit to, or failed to complete, chemical testing and also indicated the place and time of that refusal. [625 Ill. Comp. Stat. Ann. 5/11-501.1. *People v. Relwani*, 2018 IL App \(3d\) 170201, 421 Ill. Dec. 152, 99 N.E.3d 152 \(App. Ct. 3d Dist. 2018\), appeal allowed, 420 Ill. Dec. 737, 98 N.E.3d 41 \(Ill. 2018\).](#)

Police officer had reasonable grounds to believe that motorist was driving or attempting to drive while under the influence of alcohol, as needed to obtain a suspension of license under implied consent law based on motorist's refusal to take a test for alcohol concentration, where officer found motorist in driver's seat of his parked vehicle with keys in ignition, motorist was trespassing on his ex-girlfriend's property and refused to leave, motorist had extremely bloodshot eyes, slurred speech, and a strong odor emanating from his breath and person, and motorist refused to participate in any field sobriety tests. [Md. Code Ann., Transp. § 16-205.1. Motor Vehicle Administration v. Pollard, 466 Md. 531, 222 A.3d 177 \(2019\).](#)

Officers' oral advisements to driver who had been stopped on suspicion of intoxicated driving, after a complete reading of advice of rights form, did not pose a statutory or due process violation; the officer's reading of the form guaranteed full advisement of administrative sanctions, including that if he refused to submit to a test, his commercial driving privileges would be disqualified for one year or for life if they had been previously disqualified. [U.S. Const. Amend. 14; Md. Code Ann., Transp. § 16-205.1. Owusu v. Motor Vehicle Administration, 461 Md. 687, 197 A.3d 35 \(2018\).](#)

Driver was not prejudiced by police officer's misleading statement during implied consent warning indicating that driver's refusal to submit to a urine test was a crime, and thus there was no due process violation entitling him to rescission of his driver's license revocation, where driver refused to submit to blood or urine tests, and thus he did not rely on officer's misleading statement. [U.S. Const. Amend. 14. Johnson v. Commissioner of Public Safety, 911 N.W.2d 506 \(Minn. 2018\).](#)

Findings of ALJ, that petitioner refused to submit to a chemical test in violation of Vehicle and Traffic Law and thus that revocation of his driver's license was warranted, were supported by substantial evidence, where record demonstrated that arresting officer, who testified at the hearing, gave petitioner a sufficient explanation of the consequence of refusing to submit to a chemical test, and petitioner refused to testify at hearing to support claim that officer gave him an incorrect explanation of the refusal warnings. [N.Y. Vehicle and Traffic Law § 1194\(2\)\(c\)\(3\). Gazda v. New York State Department of Motor Vehicles, 159 A.D.3d 903, 72 N.Y.S.3d 555 \(2d Dep't 2018\).](#)

A motorist's refusal to submit to alcohol testing cannot be cured with an independent test without also taking the chemical test requested by law enforcement; abrogating [Scott v. N.D. Dep't of Transp., 557 N.W.2d 385. NDCC §§ 39-20-01, 39-20-02. City of West Fargo v. Williams, 2019 ND 161, 930 N.W.2d 102 \(N.D. 2019\).](#)

The record affirmatively showed that driver refused the onsite screening test, even though police officer could not recollect whether there was an express denial, in support of revocation of driver's license; driver was given an opportunity to contact an attorney, was read the implied consent advisory multiple times, and when asked to take a chemical breath test stated that I dont know and that he was scared, and officer testified that driver refused to provide a breath sample. [NDCC § 39-20-04. Sutton v. North Dakota Department of Transportation, 2019 ND 132, 927 N.W.2d 93 \(N.D. 2019\).](#)

Evidence was sufficient to conclude that deputy's request for onsite screening test for driving under the influence (DUI) was proper, as required to suspend driver's license for test refusal, even if officer's testimony as to deputy's observations was inadmissible hearsay; Department of Transportation's Report and Notice, which was admitted without objection and was not rebutted by driver, indicated that there was single-vehicle crash, odor of alcoholic beverage, poor balance, and an open container. [NDCC § 39-20-14\(1\). Marman v. Levi, 2017 ND 133, 2017 WL 2464539 \(N.D. 2017\).](#)

[END OF SUPPLEMENT]

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Footnotes

¹ [DePoutot v. Raffaelly, 424 F.3d 112 \(1st Cir. 2005\) \(applying New Hampshire law\).](#)

² [Betterman v. State, Dept. of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 \(2007\).](#)

³ [Davis v. Driver and Motor Vehicle Services Div. \(DMV\), 209 Or. App. 39, 146 P.3d 378 \(2006\).](#)

- 4 Arnold v. Director of Dept. of Revenue, 593 S.W.2d 624 (Mo. Ct. App. S.D. 1980).
- 5 Beck v. Tofany, 70 Misc. 2d 273, 332 N.Y.S.2d 938 (Sup 1972).
- 6 Morgan v. Iowa Dept. of Public Safety, 227 N.W.2d 155 (Iowa 1975).
- 7 State v. Rajala, 54 Ala. App. 502, 310 So. 2d 223 (Civ. App. 1975); Com., Dept. of Transp., Bureau of Traffic Safety v. Kelly, 18 Pa. Commw. 490, 335 A.2d 882 (1975).
- 8 Pfeffer v. Department of Public Safety, 136 Ga. App. 448, 221 S.E.2d 658 (1975).
- 9 Covington v. Department of Motor Vehicles, 102 Cal. App. 3d 54, 162 Cal. Rptr. 150 (2d Dist. 1980).
- 10 Morgan v. Department of Motor Vehicles, 148 Cal. App. 3d 165, 195 Cal. Rptr. 707 (3d Dist. 1983); Hess v. Tice, 43 Colo. App. 47, 598 P.2d 536 (App. 1979); Matter of Suazo, 1994-NMSC-070, 117 N.M. 785, 877 P.2d 1088 (1994); Reed v. New York State Dept. of Motor Vehicles, 59 A.D.2d 974, 399 N.Y.S.2d 332 (3d Dep't 1977).
- 11 Garcia v. Department of Motor Vehicles, 185 Cal. App. 4th 73, 109 Cal. Rptr. 3d 906 (1st Dist. 2010); Odrigewitch v. Director, North Dakota Dept. of Transp., 2002 ND 177, 653 N.W.2d 73 (N.D. 2002); Nardone v. Com., Dept. of Transp., Bureau of Driver Licensing, 130 A.3d 738 (Pa. 2015).
- 12 Payne v. Department of Motor Vehicles, 235 Cal. App. 3d 1514, 1 Cal. Rptr. 2d 528 (1st Dist. 1991).
- 13 DePoutot v. Raffaelly, 424 F.3d 112 (1st Cir. 2005) (applying New Hampshire law), (the driver expressed consent and then prevented testing); Dozier v. Pierce, 279 Ga. App. 464, 631 S.E.2d 379 (2006) (motorist gave breath samples which were insufficient to cause breath analyzer to register an alcohol concentration); Wei v. Director of Revenue, 335 S.W.3d 558 (Mo. Ct. App. S.D. 2011) (motorist gave breath samples which were insufficient to cause breath analyzer to register an alcohol concentration).
- 14 Tedder v. Hodges, 119 N.C. App. 169, 457 S.E.2d 881 (1995); Brinkerhoff v. Com., Dept. of Transp. Bureau of Traffic Safety, 59 Pa. Commw. 419, 430 A.2d 338 (1981).
- 15 Gardner v. North Dakota Dept. of Transp., 2012 ND 223, 822 N.W.2d 55 (N.D. 2012); Hollis v. State ex rel. Dept. of Public Safety, 2008 OK 31, 183 P.3d 996 (Okla. 2008); Nardone v. Com., Dept. of Transp., Bureau of Driver Licensing, 130 A.3d 738 (Pa. 2015).
- 16 Purcell v. Com., Dept. of Transp., Bureau of Driver Licensing, 689 A.2d 1002 (Pa. Commw. Ct. 1997) (officer had requested that driver take test and had issued *Miranda* warning).
- 17 Carrey v. Department of Motor Vehicles, 183 Cal. App. 3d 1265, 228 Cal. Rptr. 705 (2d Dist. 1986); Beck v. Cox, 597 P.2d 1335 (Utah 1979).
- 18 Betterman v. State, Dept. of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).
- 19 McQuaide v. Com. Dept. of Transp., Bureau of Driver Licensing, 166 Pa. Commw. 683, 647 A.2d 299 (1994).
- 20 § 125.
- 21 Gallion v. Colorado Dept. of Revenue, 171 P.3d 217 (Colo. 2007).

7A Am. Jur. 2d Automobiles § 139

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Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

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b. Grounds for Suspension or Revocation

(4) Conviction of Motor Vehicle Offense

(a) In General

§ 139. Suspension or revocation of license for conviction of motor vehicle offense, generally

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(1) to 144.1(4)

A number of motor vehicle statutes have provisions for the suspension or revocation of a drivers' license where the licensee is convicted of certain offenses relating to motor vehicles,¹ such as where a licensee is convicted of—

- leaving the scene of an accident without reporting²
- driving with a suspended license³
- reckless driving⁴
- negligent driving⁵
- speeding⁶
- driving while intoxicated⁷

Under some statutes, provision is made for the suspension or revocation of drivers' licenses where the licensees are convicted of a specified number of violations of the laws relating to motor vehicles within a specified period of time.⁸ Under other statutes, revocation or suspension may be imposed for a violation of any law intended to make travel on the highways safe.⁹

The revocation of a driver's license is mandatory under some statutes if the licensee is convicted of one of certain kinds of offenses relating to the operation of motor vehicles,¹⁰ including driving under the influence of drugs or alcohol¹¹ or using a motor vehicle in the commission of a felony.¹² Under such a statute, it has been held that the licensee is not entitled to a hearing prior to the suspension.¹³

Observation:

Revocation of motorist's driver's license was not warranted following his conviction for operating an uninsured vehicle, where the motorist was unaware that his insurance had been mistakenly cancelled by his insurer after he requested that the insurer cancel insurance on another vehicle that he no longer owned, lack of insurance was discovered when the motorist returned to scene to report an automobile accident, and the insured immediately reinstated his insurance.¹⁴

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Footnotes

- ¹ Emmertson v. State Tax Commission, 93 Utah 219, 72 P.2d 467, 113 A.L.R. 1174 (1937); State v. Wayne, 134 Wash. App. 873, 142 P.3d 1125 (Div. 3 2006).
- ² Application of Eckerson, 284 A.D. 56, 130 N.Y.S.2d 367 (4th Dep't 1954); Appeal of Brennan, 344 Pa. 209, 25 A.2d 155 (1942).
- ³ Noyes v. Peters, 40 N.C. App. 763, 253 S.E.2d 584 (1979).
- ⁴ Donahue v. Fletcher, 299 N.Y. 227, 86 N.E.2d 574 (1949); Anglin v. Joyner, 181 Va. 660, 26 S.E.2d 58 (1943).
- ⁵ State v. Gatchell, 150 N.H. 642, 843 A.2d 332 (2004).
- ⁶ De Martino v. Mealey, 284 N.Y. 231, 30 N.E.2d 486 (1940).
A driver, who had forfeited collateral furnished for tickets for excessive speed on three occasions within one year, could not collaterally attack the final order of the director of motor vehicles revoking his privilege to operate a motor vehicle. Fiske v. England, 243 A.2d 682 (D.C. 1968).
- ⁷ May v. Lingo, 277 Ala. 92, 167 So. 2d 267 (1964); Goats v. State, 211 Tenn. 249, 364 S.W.2d 889 (1963); Emmertson v. State Tax Commission, 93 Utah 219, 72 P.2d 467, 113 A.L.R. 1174 (1937); Bolio v. Malloy, 126 Vt. 424, 234 A.2d 336 (1967); Com. v. Ellett, 174 Va. 403, 4 S.E.2d 762 (1939).
- ⁸ §§ 144 to 146.
- ⁹ North Dakota Dept. of Transp. v. DuPaul, 487 N.W.2d 593 (N.D. 1992).
- ¹⁰ Bottcher v. State, 300 P.3d 528 (Alaska 2013); Commonwealth v. Harris, 278 Ky. 218, 128 S.W.2d 579 (1939); Emmertson v. State Tax Commission, 93 Utah 219, 72 P.2d 467, 113 A.L.R. 1174 (1937).
- ¹¹ State v. Madrigal, 110 Nev. 1005, 879 P.2d 746 (1994); Crosswy v. State, 157 Tenn. 363, 8 S.W.2d 486 (1928); Dale v. Knopp, 231 W. Va. 88, 743 S.E.2d 899 (2013).
- ¹² State v. Griffin, 126 Wash. App. 700, 109 P.3d 870 (Div. 1 2005).
- ¹³ Risner v. State, 45 Ohio App. 2d 5, 74 Ohio Op. 2d 9, 340 N.E.2d 433 (1st Dist. Butler County 1975).
- ¹⁴ Meola v. New York State Dept. of Motor Vehicles, 39 A.D.3d 1011, 833 N.Y.S.2d 716 (3d Dep't 2007).

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(a) In General

§ 140. Constitutional issues; distinction between civil and criminal proceedings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(1) to 144.1(4)

It is not double jeopardy to subject a driver subject to criminal court proceedings for driving under the influence to administrative proceedings for the revocation or suspension of his or her license in connection with the same incident,¹ as license suspension is not a criminal punishment because it is not punitive, deterrent, or retributive.² Suspension or revocation of a driver's license is a considered to be a separate, civil penalty distinct from a criminal trial for driving under the influence.³

License revocation or suspension statutes have been upheld as against an argument that they violate equal protection.⁴ A statute providing for a longer suspension for drivers under the age of 18 who are convicted of such an offense does not violate due process of law, because such a provision bears a rational relationship to the state's legitimate interest in preventing highway deaths.⁵

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Footnotes

¹ [Covington v. Department of Motor Vehicles](#), 102 Cal. App. 3d 54, 162 Cal. Rptr. 150 (2d Dist. 1980).

² [Ellis v. Pierce](#), 230 Cal. App. 3d 1557, 282 Cal. Rptr. 93 (1st Dist. 1991).

- ³ Blake v. Department of Motor Vehicles, 2002 WL 32680 (Cal. App. 4th Dist. 2002), unpublished/noncitable; In re Bowman, 135 Idaho 843, 25 P.3d 866 (Ct. App. 2001); Com. Transp. Cabinet v. Mohnhey, 107 S.W.3d 907 (Ky. Ct. App. 2003) (applying Florida law); Com. v. Wolf, 534 Pa. 283, 632 A.2d 864 (1993); Matter of Revocation of Driver License of Fischer, 395 N.W.2d 598 (S.D. 1986); Minchenko v. Vermont Com'r of Motor Vehicles, 164 Vt. 624, 672 A.2d 478 (1995); Cash v. Com., 251 Va. 46, 466 S.E.2d 736 (1996).
- ⁴ Bath v. Colorado Dept. of Revenue, Motor Vehicle Div., 758 P.2d 1381 (Colo. 1988).
- ⁵ Manatt v. State, 311 Ark. 17, 842 S.W.2d 845 (1992); In re Arthur W., 171 Cal. App. 3d 179, 217 Cal. Rptr. 183 (2d Dist. 1985).

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(a) In General

§ 141. What amounts to conviction

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(1)

The question has frequently arisen as to what amounts to a conviction or a showing of conviction within the meaning of statutes making a conviction of certain offenses grounds for the suspension or revocation of a driver's license. Some jurisdictions have taken the view that a plea or finding of guilty,¹ continuance of the case without a finding of guilty,² payment of a fine,³ or nolo contendere (no contest)⁴ is sufficient to satisfy the requirements of the pertinent statute, though there is authority to the contrary.⁵ In some jurisdictions, even a forfeiture of collateral posted to secure an appearance at a trial has been deemed the equivalent of a conviction for the purpose of a statute authorizing the suspension or revocation of a driver's license.⁶ However, other jurisdictions have adopted the view that a sentence must be imposed before it can be said that a motorist was "convicted" of a traffic offense within the meaning of a statute authorizing the suspension or revocation of a driver's license.⁷

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Footnotes

¹ [Jones v. Kelly](#), 9 A.D.2d 395, 194 N.Y.S.2d 585 (4th Dep't 1959).

² [Tirado v. Board of Appeal on Motor Vehicle Liability Policies and Bonds](#), 472 Mass. 333, 34 N.E.3d 334 (2015).

³ [Motor Vehicle Admin. v. Salop](#), 439 Md. 410, 96 A.3d 192 (2014).

⁴ [State v. S.S.](#), 8 So. 3d 425 (Fla. 2d DCA 2009); [Howe v. Cofer](#), 144 Ga. App. 589, 241 S.E.2d 472 (1978).
For a case holding to the contrary except where it involves loss of a commercial driver's license, see [Miller v. Wood](#), 229 W. Va. 545, 729 S.E.2d 867 (2012).

⁵ [Davis v. State](#), 269 Ga. 276, 496 S.E.2d 699 (1998) (first offender's guilty plea did not constitute a conviction sufficient to serve as basis for suspension of driver's license).

⁶ [Lamb v. Parsons](#), 195 Va. 353, 78 S.E.2d 707 (1953).

⁷ [Barbour v. Scheidt](#), 246 N.C. 169, 97 S.E.2d 855 (1957).

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(b) Conviction Outside the State

§ 142. Suspension or revocation of license for conviction outside the state, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(1), 144.1(3)

Under some statutes, provision is made for the suspension or revocation of drivers' licenses when a licensee is convicted of specified offenses relating to motor vehicles outside the state.¹ The validity of such statutes has generally been sustained as against various kinds of constitutional objections.²

Under statutes providing for the revocation or suspension of a driver's license for an out-of-state conviction of an offense which, if committed in the licensing state, would be grounds for suspension or revocation of the license there, it has been held that the licensing authority should not suspend or revoke the license where the information contained in the notice of conviction shows, or indicates the possibility, that the motorist had been convicted of an offense that is no ground for suspension or revocation in the licensing state.³ However, suspension on the basis of such a conviction is valid under such a statute even though the evidentiary standards in the convicting state differ from those in the licensing state.⁴

The revocation of a driver's license based upon a conviction under the motor vehicle laws of another state does not violate the driver's constitutional rights to extent that the other state did not advise the driver what would happen to his or her in-state license, and the revoking state did not brief its drivers on the risks of violating the laws of other states.⁵

Footnotes

- ¹ Klug v. Nebraska Department of Motor Vehicles, 291 Neb. 235, 864 N.W.2d 676 (2015); Farrell v. Strelecki, 88 N.J. Super. 221, 211 A.2d 398 (App. Div. 1965); In re Oates, 18 N.C. App. 320, 196 S.E.2d 596 (1973).
- ² Burgess v. Ryan, 996 F.2d 180 (7th Cir. 1993); Witsch Motor Vehicle Operator's License Case, 194 Pa. Super. 384, 168 A.2d 772, 87 A.L.R.2d 1015 (1961); Beaudoin v. Petit, 122 R.I. 469, 409 A.2d 536 (1979).
- ³ Moore v. Macduff, 309 N.Y. 35, 127 N.E.2d 741 (1955); Shewack v. Com., Dept. of Transp., Bureau of Driver Licensing, 993 A.2d 916 (Pa. Commw. Ct. 2010).
- ⁴ Anderson v. State, Dept. of Public Safety and Dept. of Transp., 305 N.W.2d 786 (Minn. 1981).
- ⁵ Burgess v. Ryan, 996 F.2d 180 (7th Cir. 1993).

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(b) Conviction Outside the State

§ 143. Interstate compacts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(3)

Under a driver license compact, each member state is required to treat a conviction in a sister state in the same manner as it would an in-state conviction.¹ For a driver license compact to apply so that convictions of driving under the influence in party states to the compact will be given reciprocal effect, there must be sufficient evidence of conviction under a substantially similar statute.² The out-of-state offense must be similar to a license-revoking or license-suspending offense in the driver's home state in order to result in revocation or suspension of his or her license.³ Such a compact does not violate the constitutional provision forbidding, absent congressional approval, agreements among states that tend to enlarge political powers of states,⁴ where the participating states may withdraw from the compact at will, as each member state has a substantial police power interest in identifying and regulating traffic violators.⁵

Where an out-of-state conviction is entered into an electronic database pursuant to an interstate compact, it is admissible as part of a certified abstract of the defendant's driving record in a proceeding for the suspension of the driver's license.⁶

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Footnotes

¹ [Miller v. White](#), 372 Ill. App. 3d 661, 311 Ill. Dec. 311, 868 N.E.2d 311 (4th Dist. 2007); [State ex rel. Landon v.](#)

Macek, 208 Mont. 172, 676 P.2d 228 (1984); Siekierda v. Com., Dept. of Transp., Bureau of Driver Licensing, 580 Pa. 259, 860 A.2d 76 (2004); Reed v. Haynes, 795 S.E.2d 518 (W. Va. 2016).

² Moles v. Gourley, 112 Cal. App. 4th 1049, 5 Cal. Rptr. 3d 555 (6th Dist. 2003).

³ New Jersey Div. of Motor Vehicles v. Ripley, 364 N.J. Super. 343, 835 A.2d 1252 (App. Div. 2003).

⁴ U.S. Const. Art. I, § 10, cl. 3.

⁵ State v. Kurt, 802 S.W.2d 954 (Mo. 1991).

⁶ McDonald v. State, Dept. of Revenue and Taxation, 846 P.2d 694 (Wyo. 1993).

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7A Am. Jur. 2d Automobiles § 144

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses

b. Grounds for Suspension or Revocation

(5) Other Grounds

§ 144. Suspension or revocation of license for habitual or persistent violations, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(1\)](#), [144.1\(3\)](#)

A.L.R. Library

[Automobiles: validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 A.L.R.4th 367](#)

Forms

Forms regarding violations, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [\[Westlaw®\(r\) Search Query\]](#)

Statutes and regulations authorizing the revocation or suspension of an operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations generally have been sustained as against various constitutional attacks directed against their validity, the clear majority of courts having rejected challenges based on alleged due process¹ and equal

protection violations,² as well as challenges based on alleged violations of the prior jeopardy bar.³

Proceedings to determine whether a driver is an habitual traffic offender are civil, not criminal, in nature, and such statutes are to be liberally construed to effectuate their purpose to remove dangerous drivers from the highway, in the interest of public safety.⁴ However, there is some authority that traffic offenses that are not specifically enumerated in an habitual traffic offender statute as predicates for license suspension may not be considered in support of an habitual traffic offender adjudication,⁵ and that nonmoving violations are also excluded from the analysis.⁶

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Footnotes

- ¹ Doe v. Edgar, 721 F.2d 619 (7th Cir. 1983); People v. Shaver, 630 P.2d 600 (Colo. 1981); State v. Kamalski, 429 A.2d 1315 (Del. Super. Ct. 1981); Wheeler v. Department of Highway Safety and Motor Vehicles, 297 So. 2d 128 (Fla. 2d DCA 1974); Hardison v. Shepard, 246 Ga. 196, 269 S.E.2d 458 (1980); Clark v. Secretary of State, 483 A.2d 708 (Me. 1984); State v. Sinner, 207 N.W.2d 495, 60 A.L.R.3d 350 (N.D. 1973); State v. James, 78 Or. App. 433, 717 P.2d 214 (1986); Yeckley v. Com., Dept. of Transp., 81 Pa. Commw. 576, 474 A.2d 71 (1984).
- ² Doe v. Edgar, 721 F.2d 619 (7th Cir. 1983); Van Gerpen v. Peterson, 620 P.2d 714 (Colo. 1980); Owens v. State ex rel. VanNatta, 178 Ind. App. 406, 382 N.E.2d 1312 (1978); Yeckley v. Com., Dept. of Transp., 81 Pa. Commw. 576, 474 A.2d 71 (1984); State v. Kent, 87 Wash. 2d 103, 549 P.2d 721 (1976).
- ³ State v. Kamalski, 429 A.2d 1315 (Del. Super. Ct. 1981); Johnston v. State, 236 Ga. 370, 223 S.E.2d 808 (1976) (overruled on other grounds by, Barnes v. State, 275 Ga. 499, 570 S.E.2d 277 (2002)); Hardin v. State ex rel. Van Natta, 176 Ind. App. 514, 376 N.E.2d 518 (1978); In re France, 147 Mont. 283, 411 P.2d 732 (1966); State v. Bowles, 113 N.H. 571, 311 A.2d 300 (1973); State v. Carlisle, 285 N.C. 229, 204 S.E.2d 15 (1974); State v. Sinner, 207 N.W.2d 495, 60 A.L.R.3d 350 (N.D. 1973); State v. Conley, 639 S.W.2d 435 (Tenn. 1982).
- ⁴ People v. Able, 200 Colo. 115, 618 P.2d 1110 (1980); Villa v. State, 456 A.2d 1229 (Del. 1983); Johnston v. State, 236 Ga. 370, 223 S.E.2d 808 (1976) (overruled on other grounds by, Barnes v. State, 275 Ga. 499, 570 S.E.2d 277 (2002)); Haswell v. Powell, 38 Ill. 2d 161, 230 N.E.2d 178 (1967); Hill v. State, 15 N.E.3d 589 (Ind. Ct. App. 2014); Sueppel v. Eads, 261 Iowa 923, 156 N.W.2d 115 (1968); State v. Boos, 232 Kan. 864, 659 P.2d 224 (1983); Clark v. Secretary of State, 483 A.2d 708 (Me. 1984); State v. Riendeau, 160 N.H. 288, 999 A.2d 329 (2010); State v. Ponce, 93 Wash. 2d 533, 611 P.2d 407 (1980).
- ⁵ State v. Carter, 45 Or. App. 301, 608 P.2d 570 (1980).
- ⁶ State v. Strassburg, 120 Wis. 2d 30, 352 N.W.2d 215 (Ct. App. 1984).

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7A Am. Jur. 2d Automobiles § 145

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses


b. Grounds for Suspension or Revocation

(5) Other Grounds

§ 145. Habitual violations under point system

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(3)

A.L.R. Library

[Regulations establishing a "point system" as regards suspension or revocation of license of operator of motor vehicle, 5 A.L.R.3d 690](#)

In some states, motor vehicle officials have established a so-called "point system" to single out habitual or persistent violators, whereby points are charged against a driver's record for violations of laws relating to motor vehicles, and upon accumulation of a specified number of such points, such officials may suspend or revoke the violator's license.¹ The validity of such a point system has been upheld.² Suspension of a minor's license after he or she has accumulated fewer points than is required for suspension of an adult's license is constitutionally permissible.³

Regulations establishing a point system as regards suspension or revocation of driving licenses generally have been regarded by the courts as not being for the purpose of punishment, but instead for the purpose of increasing public safety on highways.⁴ Such regulations do not violate equal protection,⁵ do not constitute an unlawful delegation of legislative power,⁶ are not an unreasonable exercise of the police power,⁷ and are not invalid as ex post facto applications.⁸ Drivers have also been viewed receiving due process under such regulations.⁹

A suspension based on a driver's accumulation of excess points may include points that have served as the basis for a prior suspension.¹⁰

Although some delay is acceptable, a motor vehicle department must act with reasonable promptness in suspending a driver's license on the basis of excess point accumulation¹¹ and out-of-state traffic violations.¹²

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Footnotes

- ¹ Kriesel v. McCarthy, 214 Cal. App. 2d 69, 29 Cal. Rptr. 256, 5 A.L.R.3d 684 (2d Dist. 1963); City of St. Peters v. Roeder, 466 S.W.3d 538 (Mo. 2015); Ross v. Macduff, 309 N.Y. 56, 127 N.E.2d 806 (1955).
- ² Zaba v. Motor Vehicle Division, Dept. of Revenue, 183 Colo. 335, 516 P.2d 634 (1973); Wolfe v. Com. Dept. of Transp. Bureau of Traffic Safety, 24 Pa. Commw. 261, 355 A.2d 600 (1976).
- ³ Lopez v. Motor Vehicle Division, Dept. of Revenue, 189 Colo. 133, 538 P.2d 446 (1975).
- ⁴ Kriesel v. McCarthy, 214 Cal. App. 2d 69, 29 Cal. Rptr. 256, 5 A.L.R.3d 684 (2d Dist. 1963); Jones v. Kirkman, 138 So. 2d 513 (Fla. 1962); Rudd v. David, 444 S.W.2d 457 (Mo. 1969); Durfee v. Ress, 163 Neb. 768, 81 N.W.2d 148 (1957); South Carolina State Highway Dept. v. Harbin, 226 S.C. 585, 86 S.E.2d 466 (1955).
- ⁵ Smith v. Charnes, 649 P.2d 1089 (Colo. 1982); Zarsky v. State, 300 So. 2d 261 (Fla. 1974); Phipps v. Schaffner, 505 S.W.2d 89 (Mo. 1974); Com., Dept. of Transp., Bureau of Traffic Safety v. Huff, 10 Pa. Commw. 261, 310 A.2d 435 (1973).
- ⁶ State v. Birmingham, 95 Ariz. 310, 390 P.2d 103 (1964), on reh'g, 96 Ariz. 109, 392 P.2d 775 (1964); Campbell v. State, Dept. of Revenue, Division of Motor Vehicles, 176 Colo. 202, 491 P.2d 1385, 60 A.L.R.3d 419 (1971); Jones v. Kirkman, 138 So. 2d 513 (Fla. 1962); Ross v. Macduff, 309 N.Y. 56, 127 N.E.2d 806 (1955).
- ⁷ Zaba v. Motor Vehicle Division, Dept. of Revenue, 183 Colo. 335, 516 P.2d 634 (1973); Brown v. Sullivan, 195 Neb. 729, 240 N.W.2d 51 (1976).
- ⁸ Casci v. State, 293 So. 2d 403 (Fla. 2d DCA 1974), judgment aff'd, 307 So. 2d 446 (Fla. 1975); Durfee v. Ress, 163 Neb. 768, 81 N.W.2d 148 (1957).
- ⁹ Reese v. Kassab, 334 F. Supp. 744 (W.D. Pa. 1971); Campbell v. State, Dept. of Revenue, Division of Motor Vehicles, 176 Colo. 202, 491 P.2d 1385, 60 A.L.R.3d 419 (1971); Zarsky v. State, 300 So. 2d 261 (Fla. 1974); State v. Hanson, 493 S.W.2d 8 (Mo. Ct. App. 1973); Stauffer v. Weedlun, 188 Neb. 105, 195 N.W.2d 218 (1972).
- ¹⁰ Mancini v. Secretary of State, 203 Mich. App. 569, 512 N.W.2d 859 (1994).
- ¹¹ Berlowitz v. Department of Motor Vehicles, 210 Neb. 843, 317 N.W.2d 93 (1982).
- ¹² Williams v. Cofer, 246 Ga. 344, 271 S.E.2d 486 (1980).

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7A Am. Jur. 2d Automobiles § 146

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses


b. Grounds for Suspension or Revocation

(5) Other Grounds

§ 146. Habitual recklessness or negligence in driving

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(3)

A.L.R. Library

[Automobiles: validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 A.L.R.4th 367](#)

One's driver's license is subject to suspension or revocation under some statutes where he or she is a habitually reckless or negligent driver.¹ Such statutes have been held valid as against the contention that they fail to contain any fixed standard or guide to which the suspending or revoking officials must conform to determine whether or not a driver is habitually reckless or negligent.² It has been said that the terms "habitual," "reckless," and "negligent" are well-known to all and the suspending or revoking officials have thereby a definite and tangible standard to guide them in their determination.³

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Footnotes

¹ [U.S. v. Fox, 60 F.3d 181 \(4th Cir. 1995\); Johnson v. Sanchez, 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449 \(1960\).](#)

² [Johnson v. Sanchez, 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449 \(1960\).](#)

³ [Johnson v. Sanchez, 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449 \(1960\).](#)

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7A Am. Jur. 2d Automobiles § 147

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Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses

c. Procedure for Suspension or Revocation

(1) In General

§ 147. Procedure for suspension or revocation of driver's license, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(1\)](#), [144.2\(.5\)](#), [144.2\(1\)](#)

A.L.R. Library

[Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 427](#)

Forms

Forms regarding revocation, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic
[\[Westlaw®\(r\) Search Query\]](#)

A proceeding to suspend or revoke a driver's license is considered administrative rather than judicial.¹ The revocation of a driver's license is a civil, and not a criminal, sanction; therefore, constitutional guarantees do not apply to such proceedings to the same extent that they apply to criminal trials,² though because the administrative suspension of a license to drive

involves state action that adjudicates important interests of the licensee, licenses are not to be taken away without the procedural due process required by the 14th Amendment.³ However, drivers whose licenses are to be suspended or revoked are entitled to some protection under the Due Process Clause of the United States Constitution, including, in many cases, pretermination notice and hearing.⁴

A limitation of the time within which a driver may request a hearing on his or her license suspension does not violate due process,⁵ and a driver who fails to request a hearing in that time thereby waives his or her right to a hearing.⁶ Where such a waiver has occurred, a court does not have discretion to refuse to suspend a license, and cannot vacate an order suspending the license under the rule providing relief from a judgment on the ground of mistake, inadvertence, or excusable neglect.⁷

The statutory time frame for holding an administrative license revocation hearing is directory, not mandatory, and the failure to hold a hearing within the time frame does not invalidate the proceedings unless the motorist can show that he or she was prejudiced by the delay.⁸ Although the Department of Motor Vehicles must act with reasonable promptness in revoking or suspending a driver's license,⁹ the right to a speedy trial does not apply to such civil, administrative actions. Neither is there a right to a determination of the facts by a jury in such an administrative proceeding.¹⁰ However, the licensee has the right to be confronted with the witnesses at such hearing, and must be given an opportunity to cross-examine them.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Oregon statute, suspending an individual's driver's license for failure to pay traffic debt, did not violate procedural due process; right to drive was not constitutionally fundamental, there was little risk of erroneous deprivation given that suspensions were triggered by the objective fact of nonpayment of fines, there was no constitutional right to indigency determination in the first place, and government had strong interest in enforcing traffic fines to deter continuing traffic violations. [U.S. Const. Amend. 14](#); [Or. Rev. Stat. § 809.210\(1\)](#). [Mendoza v. Garrett](#), 358 F. Supp. 3d 1145 (D. Or. 2018).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Wolney v. Secretary of State](#), 77 Mich. App. 61, 257 N.W.2d 754 (1977); [Johnson v. Sanchez](#), 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449 (1960); [Com. v. Cronin](#), 336 Pa. 469, 9 A.2d 408, 125 A.L.R. 1455 (1939).
- ² [People v. Smith](#), 172 Ill. 2d 289, 216 Ill. Dec. 658, 665 N.E.2d 1215 (1996); [Ruge v. Kovach](#), 467 N.E.2d 673 (Ind. 1984); [Luk v. Com.](#), 421 Mass. 415, 658 N.E.2d 664 (1995); [State ex rel. Majerus v. Carter](#), 214 Mont. 272, 693 P.2d 501 (1984).
- ³ [Chancellor v. Dozier](#), 283 Ga. 259, 658 S.E.2d 592 (2008); [Bell v. Idaho Transp. Dept.](#), 151 Idaho 659, 262 P.3d 1030 (Ct. App. 2011); [Robinson v. Kansas Dept. of Revenue](#), 37 Kan. App. 2d 425, 154 P.3d 508 (2007).
- ⁴ § 148.
- ⁵ [Giberson v. Quinn](#), 445 A.2d 1007 (Me. 1982).
- ⁶ [State ex rel. Ruddlesden v. Roberts](#), 175 W. Va. 161, 332 S.E.2d 122 (1985).
- ⁷ [Ausman v. State](#), 124 Idaho 839, 864 P.2d 1126 (1993).
- ⁸ [Betterman v. State, Dept. of Motor Vehicles](#), 273 Neb. 178, 728 N.W.2d 570 (2007).

⁹ In re Arndt, 67 N.J. 432, 341 A.2d 596 (1975).

¹⁰ City of Cincinnati v. Wright, 77 Ohio App. 261, 33 Ohio Op. 23, 47 Ohio L. Abs. 89, 67 N.E.2d 358 (1st Dist. Hamilton County 1945).

¹¹ Application of Kafka, 272 A.D. 364, 71 N.Y.S.2d 179 (1st Dep't 1947).

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7A Am. Jur. 2d Automobiles § 148

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Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses

c. Procedure for Suspension or Revocation

(2) Necessity of Pretermination Notice and Hearing

§ 148. Requirement of pretermination notice and hearing regarding suspension or revocation of license; generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.2(.5), 144.2(1)

Drivers whose licenses are to be suspended or revoked are entitled to some protection under the Due Process Clause of the United States Constitution.¹ Except in emergency situations, due process requires that when a state seeks to terminate an interest such as a driver's license, it must provide the driver with notice and an opportunity for a hearing appropriate to the nature of the case before the termination becomes effective.² A predeprivation hearing must be meaningful, and a court in analyzing the sufficiency of a hearing should be guided by considerations of fundamental fairness.³ A meaningful hearing must include consideration of all elements essential to a decision as to whether a license may be suspended.⁴

Some courts have held that a judicial hearing, following appeal of a suspension or revocation order, cures any procedural defect caused by the lack of a hearing prior to the suspension order, at least where the court conducting the hearing orders a stay of the suspension until the judicial hearing has been conducted.⁵ It has also been held that the mandatory revocation of a driver's license based on a conviction of a criminal motor vehicle offense does not violate due process, although a hearing is not provided either prerevocation or postrevocation, where the defendant has an opportunity during the criminal proceedings establish his or her innocence.⁶

Resolution of the question of what process is due to protect against the state's erroneous deprivation of a driver's protectible due process property interest in a driver's license in regard to the state's procedures for suspension of licenses requires consideration of:⁷

- (1) the private interest that will be affected by the official action;
 - (2) the risk of an erroneous deprivation through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
 - (3) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail.
- The statutory scheme which permits an initial summary decision to suspend a person's driving privilege without a hearing based on objective statutory criteria involving public safety does not violate due process, provided that a full, postdeprivation hearing is available to challenge the suspension.⁸

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Footnotes

- ¹ State v. Pyette, 2007 MT 119, 337 Mont. 265, 159 P.3d 232 (2007); North Dakota Dept. of Transp. v. DuPaul, 487 N.W.2d 593 (N.D. 1992).
- ² Bell v. Burson, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971).
- ³ Javed v. Department of Public Safety, Div. of Motor Vehicles, 921 P.2d 620 (Alaska 1996).
- ⁴ Jarvis v. Director of Revenue, 804 S.W.2d 22 (Mo. 1991).
- ⁵ Grindlinger v. Com., Dept. of Transp., Bureau of Traffic Safety, 7 Pa. Commw. 347, 300 A.2d 95 (1973).
- ⁶ State v. Jennings, 150 Ariz. 90, 722 P.2d 258 (1986).
- ⁷ Mackey v. Montrym, 443 U.S. 1, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1979); State v. Hochhausler, 76 Ohio St. 3d 455, 1996-Ohio-374, 668 N.E.2d 457 (1996).
- ⁸ Jarvis v. Director of Revenue, 804 S.W.2d 22 (Mo. 1991); State v. Hochhausler, 76 Ohio St. 3d 455, 1996-Ohio-374, 668 N.E.2d 457 (1996); Matter of Revocation of Driver License of Fischer, 395 N.W.2d 598 (S.D. 1986).

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses

c. Procedure for Suspension or Revocation

(2) Necessity of Pretermination Notice and Hearing

§ 149. Suspension or revocation pursuant to point system or for habitual or persistent violations of motor vehicle laws

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(3\)](#), [144.2\(.5\)](#), [144.2\(1\)](#)

A.L.R. Library

[Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license](#), 60 A.L.R.3d 361

Forms

Forms regarding suspension, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [\[Westlaw®\(r\) Search Query\]](#)

With respect to suspension or revocation of a driver's license pursuant to a point system or for habitual or persistent violations of motor vehicle laws, notice and hearing generally are necessary prior to the effective date of any such suspension

or revocation,¹ and, in a number of such cases, it has been held that the procedures failed to comply with the standards of due process² as required when a state seeks to terminate an interest such as a driver's license.³ In a number of other cases, courts have held, despite arguments concerning the alleged lack of notice and hearing, that the procedures for suspension or revocation under the point systems in question satisfied due process, because current due process standards when a state seeks to terminate an interest such as a driver's license⁴ do not apply to point system cases,⁵ or because the drivers in question had been given an opportunity for a hearing before their revocations or suspensions had become effective,⁶ or because the suspension was based on a point system that involved no discretion on the part of the administrator.⁷

A state statute and regulations providing for suspension of a driver's license for repeated violations of traffic regulations are constitutionally adequate under the Due Process Clause because: (1) the private interest in a license to operate a motor vehicle is not so great as to require an evidentiary hearing prior to adverse administrative action, particularly in light of the state laws' special provisions for hardship cases and for holders of commercial licenses; (2) the risk of an erroneous deprivation in the absence of a prior hearing is not great, and requiring additional procedures would be unlikely to have a significant value in reducing the number of erroneous deprivations; and (3) the public interests in administrative efficiency and, particularly, in highway safety and the prompt removal of a safety hazard, are sufficient to make the state's summary initial decision effective without a predecision administrative hearing.⁸

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Footnotes

- ¹ Reese v. Kassab, 334 F. Supp. 744 (W.D. Pa. 1971) (applying Pennsylvania law); Souter v. Department of Highway Safety and Motor Vehicles, 310 So. 2d 314 (Fla. 1st DCA 1975); State v. Petersen, 16 Wash. App. 77, 553 P.2d 1110 (Div. 2 1976).
- ² Wheeler v. Department of Highway Safety and Motor Vehicles, 297 So. 2d 128 (Fla. 2d DCA 1974); State v. Petersen, 16 Wash. App. 77, 553 P.2d 1110 (Div. 2 1976).
- ³ § 148.
- ⁴ § 148.
- ⁵ State v. Hanson, 493 S.W.2d 8 (Mo. Ct. App. 1973).
- ⁶ Cappadona v. Keith, 290 So. 2d 545 (Fla. 4th DCA 1974), judgment aff'd, 306 So. 2d 515 (Fla. 1975); Price v. State, Dept. of Public Safety, License Control and Driver Imp. Division, 325 So. 2d 759 (La. Ct. App. 1st Cir. 1976); State ex rel. Ruddlesden v. Roberts, 175 W. Va. 161, 332 S.E.2d 122 (1985).
- ⁷ Elizondo v. State, Dept. of Revenue, Motor Vehicle Division, 194 Colo. 113, 570 P.2d 518 (1977).
- ⁸ Dixon v. Love, 431 U.S. 105, 97 S. Ct. 1723, 52 L. Ed. 2d 172 (1977).

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Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses

c. Procedure for Suspension or Revocation

(2) Necessity of Pretermination Notice and Hearing

§ 150. Suspension or revocation upon conviction of certain specific offenses; driving under the influence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.2\(.5\)](#), [144.2\(1\)](#)

A.L.R. Library

[Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license](#), 60 A.L.R.3d 361

Trial Strategy

[Proof and Disproof of Alcohol Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing](#), 9 Am. Jur. Proof of Facts 3d 459

[Unreliability of the Horizontal Gaze Nystagmus Test](#), 4 Am. Jur. Proof of Facts 3d 439

[Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing](#), 4 Am. Jur. Proof of Facts 3d 229

Law Reviews and Other Periodicals

Rubenzer, [The Standardized Field Sobriety Tests: A Review of Scientific and Legal Issues](#), 32 Law & Hum. Behav. 293 (2008)

Salvin, [BUI Brew Ha Ha](#), 51-FEB Orange County Law. 38 (2009)

The modern due process standard when a state seeks to terminate an interest such as a driver's license¹ has received attention in cases concerning suspensions or revocations of a driver's license following the conviction of certain offenses (other than under point systems or habitual offender statutes). Courts in certain cases have held that statutes under consideration, providing for the suspension or revocation of a driver's license for being convicted of certain offenses or for committing an offense the conviction of which required revocation under another statute, unconstitutionally denied due process by allowing the termination of a driver's license without prior notice and hearing.² In certain other cases, courts have held, despite allegations concerning lack of notice and hearing, that statutory schemes for suspension or revocation upon convictions of enumerated offenses satisfied due process, the courts' reasoning either that the convictions in question constituted emergencies allowing suspension or revocation without prior notice and hearing, or that the drivers in question had in fact been given an opportunity for a hearing at some point before the suspension or revocation had become effective.³

CUMULATIVE SUPPLEMENT

Cases:

Motorist's remedy upon Supreme Court's determination of a facial due process violation in statute requiring payment of \$50 nonrefundable fee to obtain administrative hearing on license suspension following an arrest for driving under the influence (DUI) and confiscation of license was not the restoration of his driving privileges, but rather the refund of the fee, since the facial unconstitutionality of one provision in a statute did not necessarily make the entire statute null and void. [U.S. Const. Amend. 14](#); [Kan. Stat. Ann. § 8-1020\(d\)\(2\)](#). [Creecy v. Kansas Department of Revenue](#), 447 P.3d 959 (Kan. 2019).

Impaired Driving Elimination Act 2 (IDEA2) provision requiring seizure and immediate destruction of driver's license upon arrest for prohibited alcohol concentration in breath test violated due process clause of state constitution; no legitimate State purpose was shown for seizure and destruction, as driver could continue to drive based on paper receipt and could replace plastic license for \$25 fee, fee was not nominal economic harm, and no opportunity to challenge seizure and destruction was given to drivers. [Okla. Const. art. 2, § 7](#); [47 Okla. Stat. Ann. § 754](#). [Hunsucker v. Fallin](#), 2017 OK 100, 408 P.3d 599 (Okla. 2017), as modified, (Dec. 20, 2017).

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Footnotes

¹ § 148.

² [Harris v. State of Colo.](#), 516 F. Supp. 1128 (D. Colo. 1981); [Quick v. Department of Motor Vehicles](#), 331 A.2d 319 (D.C. 1975); [Matter of Revocation of Driver License of Fischer](#), 395 N.W.2d 598 (S.D. 1986); [Smith v. Speir](#), 504 S.W.2d 936 (Tex. Civ. App. Fort Worth 1974).

³ People v. Gerke, 123 Ill. 2d 85, 121 Ill. Dec. 262, 525 N.E.2d 68 (1988); Risner v. State, 45 Ohio App. 2d 5, 74 Ohio Op. 2d 9, 340 N.E.2d 433 (1st Dist. Butler County 1975); Com. Dept. of Transp. Bureau of Traffic Safety v. Hahn, 23 Pa. Commw. 540, 353 A.2d 74 (1976); Wells v. Roberts, 167 W. Va. 580, 280 S.E.2d 266 (1981).

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7A Am. Jur. 2d Automobiles § 151

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(2) Necessity of Pretermination Notice and Hearing

§ 151. Refusal to take sobriety test under “implied consent” statute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Automobiles](#)  [144.2\(.5\)](#), [144.2\(1\)](#), [144.2\(5.1\)](#), [144.2\(6\)](#)

A.L.R. Library

[Necessity of notice and hearing before revocation or suspension of motor vehicle driver’s license](#), 60 A.L.R.3d 361

In general, in cases concerning suspension or revocation for refusal to take a chemical intoxication test, courts have held, despite arguments concerning the alleged lack of notice and hearing, that the procedures in question satisfied due process, either because due process did not require a prior hearing in such cases, or because in fact the driver had an opportunity for a hearing before the suspension or revocation actually went into effect.¹ However, several cases concerning suspension or revocation of a driver’s license for refusal to submit to a chemical intoxication test following an arrest for driving while intoxicated have held that a statute providing for revocation or suspension on such a ground was unconstitutional for not affording a motorist a hearing prior to revocation, the courts in those cases rejecting the state’s contention that the statute met the requirements of an emergency situation² to relieve the need for a pretermination hearing under current due process standards when a state seeks to terminate an interest such as a driver’s license.³

Footnotes

- ¹ Vigil v. Motor Vehicle Division of Dept. of Revenue, 184 Colo. 142, 519 P.2d 332 (1974); State v. Ankney, 109 Idaho 1, 704 P.2d 333 (1985); Harrison v. State Dept. of Public Safety, Drivers License Division, 298 So. 2d 312 (La. Ct. App. 4th Cir. 1974), writ denied, 300 So. 2d 840 (La. 1974); Davis v. Commissioner of Public Safety, 517 N.W.2d 901 (Minn. 1994); Lavinghouse v. Mississippi Highway Safety Patrol, 620 So. 2d 971 (Miss. 1993); Jones v. Schaffner, 509 S.W.2d 72 (Mo. 1974); Application of Ventura, 108 Misc. 2d 281, 437 N.Y.S.2d 538 (Sup 1981).
- ² Chavez v. Campbell, 397 F. Supp. 1285 (D. Ariz. 1973) (applying Arizona law); Slone v. Kentucky Dept. of Transp., 379 F. Supp. 652 (E.D. Ky. 1974), judgment aff'd, 513 F.2d 1189 (6th Cir. 1975) (applying Kentucky law); Cogdill v. Department of Public Safety, 135 Ga. App. 339, 217 S.E.2d 502 (1975); Green v. Department of Public Safety, 308 So. 2d 863 (La. Ct. App. 4th Cir. 1975).
- ³ § 148.

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(3) Contents of Notice and Hearing

§ 152. Nature and sufficiency of notice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.2\(1\)](#)

A.L.R. Library

[Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 427](#)

Where the adequacy of a notice of proposed action that is given pursuant to a statute providing for the revocation of a driver's license is at issue, a court is to consider the following three factors:¹

- (1) the private interest that will be affected by the official action;
- (2) the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
- (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

In a number of cases, where the motorist failed to receive notice of a presuspension or prerevocation hearing, or failed to receive notice of a proposed suspension or revocation which would have given the driver a chance to apply for a hearing, the

courts, applying and construing particular statutory requirements as to notice, have held the suspension or revocation unlawful.² On the other hand, despite the motorist's allegation of failure to receive notice of a presuspension hearing or notice of a proposed suspension which would have given the motorist an opportunity to apply for a hearing, courts have held the suspension of the driver's license lawful, either on the ground that the statutory procedures for giving notice were complied with, or on the ground that any defect in the notice was cured by the de novo hearing in a court following appeal of the suspension.³ Defective notice also is cured where the driver appears at the hearing and is heard on the merits, or files an appeal.⁴

Practice Tip:

The state, in seeking to establish that a driver's license has been properly suspended, has the burden of establishing that notice of the hearing has been sent to the address on the traffic citation, and that burden may be satisfied by use of certified mail.⁵

CUMULATIVE SUPPLEMENT

Cases:

State department of public safety did not violate procedural due process by failing to grant administrative hearing request of motorist whose license was revoked after he refused to submit to breath or blood alcohol test, in violation of implied consent law, where motorist sent his hearing request by facsimile transmission, and department's properly-promulgated administrative rule mandated that hearing requests be submitted by mail or in person, but motorist failed to submit his request by either mail or in person. *U.S. Const. Amend. 14*; 47 Okla. Stat. Ann. §§ 751, 753, 754(D); Okla. Admin. Code 595:1-3.7. *Cole v. State ex rel. Department of Public Safety*, 2020 OK 67, 473 P.3d 467 (Okla. 2020).

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Footnotes

- ¹ *State v. Pyette*, 2007 MT 119, 337 Mont. 265, 159 P.3d 232 (2007).
- ² *Lopez v. Motor Vehicle Division, Dept. of Revenue*, 189 Colo. 133, 538 P.2d 446 (1975); *State v. Hammond*, 116 N.J. Super. 244, 281 A.2d 819 (County Ct. 1971).
- ³ *Cutlip v. Connecticut Motor Vehicles Com'r*, 168 Conn. 94, 357 A.2d 918 (1975); *People v. Liddell*, 19 Ill. App. 3d 794, 313 N.E.2d 248 (1st Dist. 1974); *Byrd v. Kansas Dept. of Revenue*, 295 Kan. 900, 287 P.3d 232 (2012); *Harrison v. State Dept. of Public Safety, Drivers License Division*, 298 So. 2d 312 (La. Ct. App. 4th Cir. 1974), writ denied, 300 So. 2d 840 (La. 1974); *State v. Tininenko*, 371 N.W.2d 762 (N.D. 1985); *State v. Bass*, 98 Or. App. 266, 778 P.2d 993 (1989).
- ⁴ *Shumate v. Department of Revenue of State of Colo., Motor Vehicle Div.*, 781 P.2d 181 (Colo. App. 1989); *Wollenburg v. Conrad*, 246 Neb. 666, 522 N.W.2d 408 (1994).
- ⁵ *State v. Addleman*, 388 So. 2d 1230 (Fla. 1980).

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(3) Contents of Notice and Hearing

§ 153. Scope of hearing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.2(1)

Under some implied-consent statutes, the determination of whether the licensee was the actual driver of the car is not at issue in a hearing for revocation for failure to consent to testing,¹ though at least one such statute has been held unconstitutional because it prohibits such an inquiry.² However, it has also been held that the legislature may define the range of inquiry to be conducted in proceedings for the temporary revocation of a driver's license.³

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Footnotes

¹ [State v. Nordness, 128 Wis. 2d 15, 381 N.W.2d 300 \(1986\).](#)

² [Javed v. Department of Public Safety, Div. of Motor Vehicles, 921 P.2d 620 \(Alaska 1996\).](#)

³ [Price v. Reed, 1986 OK 43, 725 P.2d 1254 \(Okla. 1986\).](#)

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§ 154. Evidence; burden of proof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [144.1\(1.20\)](#), [144.2\(3\)](#), [144.2\(9.5\)](#) to [144.2\(13\)](#)

Because license revocation or suspension proceedings are civil, rather than criminal,¹ the measure of evidentiary persuasion to be used in such proceedings is a preponderance of the evidence.²

Observation:

The implied consent law applies broadly and generally to those who drive, and does not require proof of actual driving immediately prior to a lawful arrest for driving while under the influence; under a statute providing for the suspension or revocation of a driver's license based on the refusal to submit to chemical testing under an implied consent law, proof that the arrestee was driving immediately prior to the arrest was not required.³

The burden of proof is on the state in an administrative hearing to make a prima facie case for the revocation of a driver's license for driving under the influence of intoxicating liquor, but once the arresting officer's sworn report is provided, then the administrative order of revocation has prima facie validity, and revocation is presumed to occur unless the motorist

establishes grounds for reversal by a preponderance of evidence.⁴ Once the state makes a prima facie case, the driver is entitled to present rebuttal evidence that raises a genuine issue of fact regarding the validity of the blood alcohol test results; the rebuttal evidence should challenge the presumption of validity established by the state's prima facie case.⁵ The driver's burden in presenting rebuttal evidence is one of production, not persuasion; the state retains the burden of proof throughout the proceeding.⁶ Similarly, in a refusal to submit to a test case, the Motor Vehicle Administration (MVA), as a "proponent" of suspensions, has the burden of establishing that there had been a refusal by conduct to submit to an alcohol concentration test; once the MVA offers some evidence to support the conclusion of test refusal, the burden shifts to the driver to demonstrate that there is an innocent explanation for his or her failure to complete the test, and if the driver does not do that, the suspension is proper based on the MVA's documentary record showing that the driver refused to complete the test.⁷ The revoking agency's findings and conclusions on questions of fact in proceedings to revoke a driver's license are prima facie true and correct and if anything in the record fairly supports the agency's decision, that decision is not against the manifest weight of the evidence.⁸ When a court is reviewing the revocation of a driver's license for refusal to take a breathalyzer test,⁹ the state must prove the elements of the case.¹⁰

Due process prohibits suspension of a driver's license on the basis of hearsay statements in an accident report.¹¹

Practice Tip:

The margin of error in a blood alcohol content test result is a relevant factor to be weighed in considering the evidence supporting revocation of a driver's license.¹²

CUMULATIVE SUPPLEMENT

Cases:

Officer who stopped motorist, who was arrested at sobriety checkpoint for driving under the influence of alcohol (DUI), was not required to testify at hearing before Office of Administrative Hearings (OAH) for Department of Motor Vehicles (DMV) to show that motorist's arrest was lawful, as required to revoke motorist's driver's license, despite claim that there was absence of any information as to what criteria officer utilized in determining that motorist should be detained for further investigation; motorist's DUI Information Sheet was part of record before OAH, which revealed that officer observed "slurred speech" and "odor of alcoholic beverages" coming from motorist. [W. Va. Code Ann. §§ 17C-5A-1\(b\), 29A-5-2\(b\)](#). [Reed v. Zipf](#), 806 S.E.2d 183 (W. Va. 2017).

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Footnotes

¹ [§ 147](#).

² [Muratore v. State ex rel. Dept. of Public Safety](#), 2014 OK 3, 320 P.3d 1024 (Okla. 2014); [Shaw v. Vermont Dist. Court](#), Unit No. 3, Franklin Circuit, 152 Vt. 1, 563 A.2d 636 (1989).

- ³ Troppman v. Valverde, 40 Cal. 4th 1121, 57 Cal. Rptr. 3d 306, 156 P.3d 328 (2007).
- ⁴ State v. Hansen, 249 Neb. 177, 542 N.W.2d 424 (1996).
- ⁵ Schroeder v. Director of Revenue, 216 S.W.3d 711 (Mo. Ct. App. E.D. 2007).
- ⁶ Schroeder v. Director of Revenue, 216 S.W.3d 711 (Mo. Ct. App. E.D. 2007).
- ⁷ Motor Vehicle Admin. v. McMillan, 428 Md. 560, 53 A.3d 340 (2012).
- ⁸ Miller v. White, 372 Ill. App. 3d 661, 311 Ill. Dec. 311, 868 N.E.2d 311 (4th Dist. 2007).
- ⁹ § 141.
- ¹⁰ Staggs v. Director of Revenue, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007).
- ¹¹ Carlton v. Department of Motor Vehicles, 203 Cal. App. 3d 1428, 250 Cal. Rptr. 809 (2d Dist. 1988).
- ¹² Lara v. Tanaka, 83 Haw. 24, 924 P.2d 192 (1996).

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(4) Review; Costs and Fees

§ 155. Review by lower court

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  136, 144.2(.5), 144.2(1), 144.2(2.1), 144.2(3)

The suspension or revocation of a driver's license is an administrative act¹ that is generally subject to judicial review.² However, under some statutes, there is no right of appeal in cases where the suspension or revocation of a driver's license is automatic, based upon the conviction of the licensee of certain offenses.³ A statute authorizing a court to review a driver's license revocation is not an unconstitutional delegation of legislative power, though it fails to specify any standards applicable on review, where the court would implicitly be bound by the same standards applied by the agency that suspended or revoked the license.⁴

The proceedings in a suit challenging an administrative revocation of a driver's license are civil in nature.⁵

Statutory provision is usually made for the time within which the review must be instituted.⁶ A person contending that his or her license has been improperly revoked has the burden of proof, by a preponderance of evidence, to show that the state has acted improperly.⁷ Moreover, a party who fails to strictly comply with the time within to institute review will have waived the right to hold review.⁸

Practice Tip:

A driver's license record submitted with a certiorari petition challenging a license suspension was devoid of evidence indicating the date of rendition of the order suspending the motorist's license, which was necessary to determine whether the petition was

timely filed and, in turn, whether the trial court had jurisdiction to review the petition.⁹

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Footnotes

¹ § 147.

² *Dodson v. Department of Highway Safety and Motor Vehicles*, 111 So. 3d 266 (Fla. 1st DCA 2013) (refusal of a hearing officer at an administrative hearing on a motorist's suspended driver's license to consider the lawfulness of the driver's arrest for driving under the influence of an alcoholic beverage departed from the essential requirements of the law, warranting certiorari relief to the driver); *Miller v. White*, 372 Ill. App. 3d 661, 311 Ill. Dec. 311, 868 N.E.2d 311 (4th Dist. 2007); *Wilczewski v. Neth*, 273 Neb. 324, 729 N.W.2d 678 (2007).

³ *Department of Public Safety v. Koonce*, 147 Fla. 616, 3 So. 2d 331 (1941); *Gilbert v. State*, 152 Tex. Crim. 200, 212 S.W.2d 182 (1948).

⁴ *Guillou v. State, Div. of Motor Vehicles*, 127 N.H. 579, 503 A.2d 838 (1986).

⁵ *People v. Gerke*, 123 Ill. 2d 85, 121 Ill. Dec. 262, 525 N.E.2d 68 (1988); *Gothard v. Spradling*, 561 S.W.2d 448 (Mo. Ct. App. 1978); *State ex rel. Majerus v. Carter*, 214 Mont. 272, 693 P.2d 501 (1984).

⁶ *Woodard v. Macduff*, 5 A.D.2d 26, 169 N.Y.S.2d 87 (4th Dep't 1957).

⁷ *People v. Smith*, 172 Ill. 2d 289, 216 Ill. Dec. 658, 665 N.E.2d 1215 (1996); *Russell v. State, Dept. of Motor Vehicles*, 247 Neb. 885, 531 N.W.2d 212 (1995).

⁸ *People v. Guillermo*, 2016 IL App (1st) 151799, 403 Ill. Dec. 833, 54 N.E.3d 974 (App. Ct. 1st Dist. 2016), appeal denied, 406 Ill. Dec. 326, 60 N.E.3d 877 (Ill. 2016); *Kuentler v. Kansas Dept. of Revenue*, 40 Kan. App. 2d 1036, 197 P.3d 874 (2008).

⁹ *Wibbens v. State, Dept. of Highway Safety and Motor Vehicles, Bureau of Driver Improvement*, 956 So. 2d 503 (Fla. 1st DCA 2007).